

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



ORIGINAL

74-1893

United States Court of Appeals  
FOR THE SECOND CIRCUIT

GEORGE FELDMAN, as Trustee in Bankruptcy of  
LEASING CONSULTANTS, INCORPORATED,  
Bankrupt,

*Plaintiff-Appellee,*

*against*

FIRST NATIONAL CITY BANK,

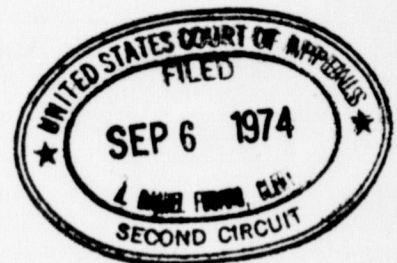
*Defendant-Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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# DOCKET ENTRIES

CIVIL DOCKET  
UNITED STATES DISTRICT COURT

Jury demand date:

78 CIV. 1732

D. C. Form No. 106 Rev.

TITLE OF CASE

JUDEE BROWN ATTORNEYS

George Feldman, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt

vs

First National City Bank

For plaintiff:

Hahn, Hessen, Margolis & Evan  
350 Fifth Ave., NYC 10001  
Ch 4-6800

For defendant:

Zalkin Rodin & Goodman  
750 Third Ave. NYC. 10017 682-6900

STATISTICAL RECORD

COSTS

DATE

NAME OR  
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed X

Clerk

4/17/73 Hahn, H.  
4/18/73 LST

J.S. 6 mailed V

Marshal

Basis of Action:

Docket fee

~~RECEIVED BY ACT.~~

FEDERAL AVIATION ACT. 1958

Witness fees

49 U.S.C.

Action arose at:

Depositions

## Docket Entries

Feldman, as Tr. vs First National City Bank

738 100-1111

JUDGE BAUMAN

DATE	PROCEEDINGS	Date Order Entered the
Apr 18-73	Filed complaint. Issued summons	
May 1-73	Filed deft's notice of motion. Re: Dismiss action, Ret before Bauman J. on 5/11/73	
May 3-73	Filed deft's memo of law.	
May 2-73	Filed summons with marshals ret, served First National City Bank on 4/25/73	
May 9-73	Filed Pltffs notice of motion Re: summary judgment, ret before Bauman J.	
May 2-73	Filed Pltffs no doc law in opposition to deft's motion to dismiss and in support of its motion for summary judgment.	
May 21-73	Filed stip and order that deft's motion and pltff's cross-motion, are hereby adjourned until 6/11/73. So Ordered--Bauman J.	
Jun 3-73	Filed stip and order that deft's motion is hereby adjourned until 6/18/73, also that deft. will serve answering papers by 6/15/73. So Ordered Bauman J.	
Jan 9-74	Filed affdvt. of Daniel A. Zimmerman in opposition to deft's motion to dismiss.	
Jan 9-74	Filed affdvt. of Louis A. Kollander	
Jan 9-74	Filed deft's memorandum of law in further support of its motion.	
Jan 9-74	Filed pltff's 2nd memorandum in opposition.	
Jan 9-74	Filed OPINION #10,193--The MUSIC MERCHANTS LEASE--Pltff's motion for summary judgment is denied. An evidentiary hearing is ordered to aid in this determination. Deft's motion to dismiss the action as time-barred under Sec. 11e of the Bank Act is denied. The trustee's action is brought under Sec. 70, to which state statutes of limitations are applicable, see Part III supra. Summary judgment is granted to the pltff-trustee in the Vicques, Raffa and True matters. Accordingly, the trustee is entitled to judgment in the amount of the payments made to FNCR after the petition in bankruptcy was filed on August 18, 1970, plus interest. The case is referred to a magistrate to hear and report as to the amount of such payments. Deft's motion to dismiss is denied. Summary judgment is denied as to the Music Merchants litigation and an evidentiary hearing to resolve the issues noted above, is ordered. Deft's motion to dismiss is denied. It is so ordered--Bauman, J.-mailed notice.	
Jan. 25-74	Filed memorandum OPINION #10,205--The application for certification is denied, and the cause is referred to Magistrate Schreiber to conduct the hearings outlined in my opinion of January 8.--So ordered--Bauman, J.-mailed notice.	
Feb. 19-74	Filed pltffs. request to produce.	
Feb. 19-74	Filed pltffs. first set of interrogatories.	
Mar. 18-74	Filed pltffs affdvt. 9(a) statement & notice of motion for summary judgment. Ret. 4-17-74.	
Mar. 18-74	Filed pltff's memo of law in support of motion.	
Mar. 22-74	Filed ANSWER to complaint.	2R&G
Mar. 22-74	Filed notice of change of firm name of attys. for deft.	
Apr. 2-74	Filed defts. answers to interrogatories.	
4-18-74	<i>Pre trial conf held by Mag. Schreiber</i>	
Apr. 10-74	Filed stip. & order adjourning pltff's motion to 4-26-74--Bauman, J.	
Apr. 26-74	Filed stip and order adjd. pltffs. motion until 5-6-74. BAUMAN, J.	
5-6-74	<i>Pre trial hearing held by Mag. Schreiber</i>	
Jun. 5-74	Filed order that report of Magistrate Schreiber of 5-29-74 is approved & accepted.	
June 5-74	Filed Magistrate's report.	
Jun 5, 74	Filed Order & Judgment 6/4, 479 in favor of pltff. Bauman, J. JUDGMENT ENTERED 6-11-74, CLERK. n/a	CLERK 6-12-74
Jun 12-74	Filed Stip. of Settlement that the Deft. will pay pltff the sum of \$4,250---Bauman, J.	
Jun 19-74	Filed Notice of Appeal of deft, First National City Bnk. from so much of the order and judgment entered 6-11-74, and filed 6-5-74. Notices filed by Lin, Kessen, Margolis & Ryan--Attys for Pltff...350 5th Ave., NYC 10001 (Notice of Appeal to USCA)	6-21-74

Page 2

D. C. 110

## COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
GEORGE FELDMAN, as Trustee in : 73 Civ.  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt, :

Plaintiff, :

-against- :

FIRST NATIONAL CITY BANK, :

Defendant.:

-----X

**73 CIV. 1722**

COMPLAINT

JUDGE BAUMAN

1. Plaintiff is the duly qualified and acting trustee in bankruptcy of Leasing Consultants Incorporated ("LCI"), a New York corporation which filed a petition for arrangement pursuant to Chapter XI of the Bankruptcy Act in the United States District Court for the Eastern District of New York on August 18, 1970, and was thereafter adjudicated a bankrupt by order dated October 16, 1970.

2. Defendant First National City Bank ("City Bank") is a national banking association formed under the laws of the United States with its principal offices in the City, County and State of New York.

3. The action arises under the Federal Aviation

*Complaint*

Act of 1958, 49 U.S.C. §1301 et seq., as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars. Jurisdiction is further predicated upon 11 U.S.C. §112 and 12 U.S.C. §91.

FOR A FIRST CAUSE OF ACTION

4. On or about March 5, 1970 LCI as lessor and Vieques Air Link, Inc. ("Vieques") as lessee executed an "Aircraft Lease" covering a 1970 Piper Cherokee, registration number N4818S. A copy of said lease is annexed hereto marked exhibit "A" and made a part hereof.

5. On or about June 23, 1970 LCI assigned the Vieques lease to City Bank as security for LCI's obligations to City Bank. A copy of said assignment is annexed hereto, marked exhibit "B" and made a part hereof.

6. Neither the "Aircraft Lease" nor the assignment thereof were filed for recordation with the Administrator of the Federal Aviation Administration ("Administrator").

7. City Bank has failed to perfect its security

*Complaint*

interest in said "Aircraft Lease" and the payments received and to be received thereunder.

8. Upon information and belief Vieques has been paying City Bank the sum of \$662.10 per month pursuant to the terms of the "Aircraft Lease" and the assignment.

9. Upon information and belief, as of March 1, 1973 and subsequent to August 18, 1970, City Bank collected thirty rental payments of \$662.10, or a total of \$19,863.00.

10. Upon information and belief, there are twenty-three additional payments due under the Vieques "Aircraft Lease" of \$662.10 each subsequent to March 1, 1973.

11. Vieques was granted a purchase option under the "Aircraft Lease" in the sum of \$1,393.90 which it prepaid.

12. City Bank's security interest in the Vieques "Aircraft Lease" and the payments made and to be made thereunder is subordinate to the rights of plaintiff and invalid as against plaintiff.

*Complaint.*

FOR A SECOND CAUSE OF ACTION

13. Plaintiff repeats the allegations of paragraphs "1", "2" and "3".

14. On or about December 8, 1969 LCI as lessor and Raffa Van Atta, Ltd. ("Raffa") as lessee executed an "Aircraft Lease" covering a 1963 Beechcraft, model D50E, registration number N558SB. A copy of said lease is annexed hereto marked exhibit "C" and made a part hereof.

15. On or about December 29, 1967 LCI assigned the Raffa lease to City Bank as security for LCI's obligations to City Bank. A copy of said assignment is annexed hereto, marked exhibit "D" and made a part hereof.

16. Neither the "Aircraft Lease" nor the assignment thereof were filed for recordation with the Administrator.

17. City Bank has failed to perfect its security interest in said "Aircraft Lease" and the payments received and to be received thereunder.

*Complaint*

18. Upon information and belief Raffa has been paying City Bank the sum of \$1,093.25 per month pursuant to the terms of the "Aircraft Lease" and the assignment.

19. Upon information and belief, as of March 1, 1973 and subsequent to August 18, 1970, City Bank has collected thirty rental payments of \$1,093.25 or a total of \$32,797.50.

20. Upon information and belief there are twenty-one additional payments due under the Raffa "Aircraft Lease" of \$1,093.25 each subsequent to March 1, 1973.

21. Raffa was granted a purchase option under the "Aircraft Lease" in the sum of \$4,380.00 which it pre-paid.

22. City Bank's security interest in the Raffa "Aircraft lease" and the payments made and to be made thereunder is subordinate to the rights of plaintiff and invalid as against plaintiff.

*Complaint*

FOR A THIRD CAUSE OF ACTION

24. Plaintiff repeats the allegations of paragraphs "1", "2" and "3".

25. On or about March 2, 1970 LCI as lessor and James W. True as lessee executed an "Aircraft Lease" covering a 1969 Piper Cherokee Arrow, registration number N2996R. A copy of said lease is annexed hereto marked exhibit "F" and made a part hereof.

26. Neither the "Aircraft Lease" nor the assignment thereof were filed for recordation with the Administrator.

27. City Bank has failed to perfect its security interest in said "Aircraft Lease" and the payments received and to be received thereunder.

28. Upon information and belief True has been paying City Bank the sum of \$571.66 per month pursuant to the terms of the "Aircraft Lease" and the assignment.

29. Upon information and belief, as of March 1,

*Complaint*

1973 and subsequent to August 18, 1970 City Bank has collected thirty rental payments of \$571.66, or a total of \$17,149.80.

30. Upon information and belief there are twenty-two additional payments due under the True "Aircraft Lease" of \$571.66 each subsequent to March 1, 1973.

31. True was granted a purchase option under the "Aircraft Lease" in the sum of \$2,407.00, \$1,203.50 of which was prepaid.

32. City Bank's security interest in the True "Aircraft Lease" and the payments made and to be made thereunder is subordinate to the rights of plaintiff and invalid as against plaintiff.

\* \* \* \* \*

WHEREFORE plaintiff demands judgment against defendant First National City Bank declaring its security interests in: (a) the Vieques "Aircraft Lease" and the payments made and to be made thereunder; (b) the Raffa "Aircraft Lease" and the payments made and to be made thereunder; (c) the True "Aircraft Lease" and the payments made and to be made thereunder; \* \* \*

subordinate to the rights of plaintiff and/or invalid as against plaintiff; directing

Complaint

defendant to turnover to plaintiff all payments received under the Vieques, Raffa and True "Aircraft Leases" subsequent to August 18, 1970, together with interest thereon at the legal rate from the various dates of receipt;

\* \* \* together with the costs of this proceeding.

Dated: New York, New York

March , 1973

April 12

HAHN, HESSEN, MARGOLIS & RYAN  
Attorneys for Plaintiff

By:



For the Firm

350 Fifth Avenue  
New York, New York 10001  
Tel.: (212) CH 4-6800

3

95-20 63rd Road, Forest Hills, N.Y. 11374

# AIRCRAFT LEASE

LEASE NO: 1451

WITNESSETH:

[illegible]

## Exhibit "A" Annexed to Complaint

Duplicate copies of all insurance policies or certificates evidencing such insurance shall be furnished to Lessor.

(c) In the event of loss or damage to the aircraft, Lessee shall immediately report said loss or damage to the Lessor, the insurance company, to any party having a security interest in the aircraft and to the interested federal and state governmental agencies, and shall furnish such information and execute such documents as may be required to collect the proceeds of any insurance policy or policies. In event of loss or damage to the leased aircraft, the parties hereto shall be bound by the provisions of the parties hereto shall be as follows: If the aircraft is lost or damaged and is not covered by said insurance policy or policies, then the loss or damage shall be the responsibility of Lessee, or his agents, servants or employees, Lessee agrees to pay to Lessor and to any party having a security interest in the aircraft, as such interests may appear, the balance due under this lease, and the contract shall then terminate. If the aircraft is only partially damaged, then this lease shall remain in full force and effect, and Lessee shall, at its own cost and expense, fully repair the aircraft so as to put it as near as possible in the same condition that it was before said damage. To the extent that such damage is covered by said insurance policy or policies, Lessor, upon receiving from Lessee such information and such documents as may be required, shall collect the proceeds from any insurance policy or policies, and shall promptly reimburse Lessee for its costs of repairing said aircraft to the full extent of, but not more than, the net amount of such insurance recovery, provided, however, that no such payment shall be made to Lessee until the repairs have been approved by the Lessor, or its agent, and the aircraft placed as near as possible in the same condition that it was before said damage.

11. Lessee shall comply with and conform to all laws and regulations relating to the ownership, possession, use or maintenance of the aircraft and shall Lessor harmless against actual or asserted violations, and pay all costs and expenses of every character incurred by or arising out of such use, and pay promptly when due all taxes and other public charges against or on the aircraft, local, State and Federal which may now or hereafter be imposed upon the aircraft, including, but not limited to, rental, sale, purchase, possession or use of the aircraft, including search and registration fees imposed by Lessor, together with any and all license and permit fees for operation of the said aircraft. Any certificates, licenses and permits issued with reference to such aircraft shall indicate that title and ownership is vested in the Lessor and shall also indicate the name of any party holding a security interest in said aircraft. Lessee agrees to reimburse Lessor upon demand for any fees or taxes paid by Lessor, including initial title research fee of \$20.00 for aircraft having single or multi-power plants or less than 750 horsepower each, and for aircraft or single or multi power plants of greater than 750 horsepower, of \$25.00 plus \$15.00 per engine.

12. This is an agreement of lease only and nothing herein shall be construed as conveying to Lessee any right, title or interest in or to the aircraft leased hereunder, except as a lease only. Title to the aircraft shall at all times remain in Lessor. Lessee shall at all times protect and defend, at its own cost and expense, the title of Lessor from and against all claims, liens and legal processes of creditors of Lessee and shall keep all of the aircraft free and clear of such claims, liens and processes.

13. This lease and all rights of Lessor hereunder shall be assignable by Lessor without the consent of Lessee and without prior notice to the Lessee but Lessee shall not be under any obligation to any assignee of Lessor except after written notice of such assignment from Lessor. Without the prior written consent of Lessor, Lessee shall not assign this lease or its interest thereunder or enter into any sublease with respect to the aircraft covered thereby. Any assignee of Lessor shall be entitled to all rights and remedies herein conferred on Lessor, but Lessor will not thereby become such assignee's agent. Lessee will settle all claims against Lessor directly with Lessor. Lessor hereby agreeing to remain responsible therefor, and Lessee will not set up any claim or defense against any assignee of Lessor. Without limiting the generality of the foregoing, no Lessee agrees that the Lessor may assign all right, title and interest to Lessor in and to all monies due and to become due to Lessor hereunder to a financing institution (hereinafter called Assignee), consents to any such assignment and, in the event of such assignment, Lessee agrees with the Lessor as follows:

(a) That is obligation to pay directly to the Assignee the amounts (whether designated as rentals or otherwise) which become due from the Lessee hereunder shall be absolutely unconditional and those amounts (or, on failure to pay those amounts, monies equal to those amounts) shall be payable to the Assignee by the Lessee whether or not this lease is terminated by operation of law or otherwise, and the Lessee promises so to pay the same notwithstanding any defense, setoff or counterclaim whatsoever whether by reason of breach of the lease or otherwise which it may or might now or hereafter have as against the Lessor (the Lessee reserving its right to have recourse directly against the Lessor on account of any such defense, setoff or counterclaim); and

(b) That subject to and without impairment of the Lessee's leasehold rights in and to the leased Equipment, Lessee holds said aircraft and the possession thereof for the Assignee to the extent of the Assignee's rights therein.

14. Lessor covenants to and with Lessee that—except as herein provided, Lessor is the owner of the aircraft free from all encumbrances and that conditioned upon Lessee's performing the conditions hereof, Lessee shall peaceably and quietly hold, possess and use the aircraft during said term without let or hindrance.

15. There shall be deemed to be a breach of this lease (a) if Lessee shall default in the payment of any rent hereunder when due, (b) if Lessee shall default in the performance of any of the other covenants herein and such default shall continue uncured for five (5) days after written notice thereof to Lessee by Lessor or by Lessee become insolvent, or if a petition in bankruptcy is filed by or against Lessee pursuant to any statute either of the United States or of any State involving a petition for reorganization, arrangement or an extension for the appointment of a receiver or a trustee or all or a portion of Lessee's property, or if Lessee makes an assignment for the benefit of creditors, or if Lessee attempts to remove, sell, transfer, encumber, sublet or part with possession of the Equipment, or any part thereof, in the event of a breach of this lease as herein defined, Lessor may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants and terms of this lease or to recover damages for the breach of such covenants and terms hereof; or

(b) By notice in writing to the Lessee terminate this lease, as to all or any of the items of aircraft leased hereunder, whereupon all right, title and interest of Lessee to or in the use of said items of aircraft shall absolutely cease and determine as though this lease had never been made, and thereupon Lessee may, through or by its agents, enter upon the premises of Lessor or other premises where any of the said aircraft may be or supposed to be and take possession thereof and thenceforth hold, possess and enjoy the same free from any right of Lessee or its successors or assigns, including any receiver, trustee in bankruptcy or assignee of Lessee, to hold or use said aircraft for any purposes whatever; but Lessee shall nevertheless have a right to recover from Lessor any and all amounts in damages, which, under the terms of this lease may be then due and be unpaid hereunder for use of said aircraft together with any damages in addition thereto which Lessor shall have sustained by reason of the breach of any covenant or covenants of this lease, together with attorney's fees, as herein provided, and such expenses as shall be expended or incurred in the seizure of aircraft or in the enforcement of any right or privilege hereunder or in any collection or action in such connection, Lessor may sell the aircraft with notice, or without notice where permitted by law, at private or public sale, without having the aircraft in such connection, and the proceeds thereof less expenses of retaking, repairing, reselling and reasonable attorney's fees will be credited upon unpaid rentals, any such sum shall be paid to such persons, if any, who are entitled by law to receive such surplus from Lessor prior to Lessee, and any unpaid residue thereof to Lessee, and the balance shall be paid by Lessee with interest. Lessor may, if it so desires instead of selling the aircraft, as above provided, retain the Equipment in satisfaction of Lessee's obligations under this lease in accordance with the provisions of law relating thereto in the event that Lessor shall upon default of Lessee refer said obligations to attorneys for commencement of legal action, there shall accrue and become owing to Lessor, in addition to all other sums owing hereunder, an amount equal to twenty (20%) percent of such sums as legal fees and expenses. No remedy of Lessor hereunder shall be exclusive of any other remedy herein or by law, and no such remedy shall be deemed a waiver of any other or a subsequent default.

16. This lease shall automatically be renewed each year for a term of one year at the renewal specified in the schedule upon all the terms and conditions hereof unless Lessee gives to Lessor written notice of cancellation not less than thirty (30) days prior to the expiration of the preceding term.

17. All notices relating hereto shall be delivered in person to an officer of Lessor or Lessee or shall be mailed by registered mail to Lessor or Lessee at their respective addresses shown above or at such other address furnished in writing to the sender by the other party.

18. This lease is entered into and is to be construed in accordance with the laws of the State of New York and shall become effective only when same shall have been countersigned by an officer of the Lessor at its home office in New York.

19. Lessor has not made any representations of any kind, nature or description except as are in this lease specifically set forth and this lease contains all the terms and agreements entered into between the parties, and no representation, agreement, guaranty, warranty, waiver or change in this lease, not included herein shall bind any assignee unless in writing signed by the assignee.

20. Lessee will at request of Lessor execute any and all documents which Lessor may deem necessary to effect the purpose and intent of this agreement, including financing statements pursuant to the Uniform Commercial Code. Lessee authorized Lessor and/or Lessor's assignee and any sublease and assignee to execute any and all documents signed only by Lessor or assignee in all places where necessary to perfect Lessor's security interest or to sign such financing statements on behalf of Lessee.

IN WITNESS WHEREOF Lessor and Lessee have executed this lease as of the date and year first above written.

LESSEE VIEQUES AIR LINK, INC

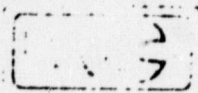
BY [Signature]

LEASING CONSULTANTS INCORPORATED

BY [Signature]

## Exhibit "A" Annexed to Complaint

18-25



LEASING CONSULTANTS INCORPORATED

95-20 63rd Road, Forest Hills, N.Y. 11374

## AIRCRAFT SCHEDULE

212-275-1500

TO LEASE NO. 1451

DATED March 5, 1970

BETWEEN LEASING CONSULTANTS INCORPORATED, AS LESSOR AND AS LESSEE

Vieques Air Link, Inc

Box 487

Vieques, Puerto Rico 00756

All terms and conditions of said lease are in full force and effect with respect to this schedule.

## A. Equipment:

Manufacturer's Name and Trade Name Piper Cherokee '6' C

Year Manufactured 1970

Model PA-32-260C

Manufacturer's Serial Number 32-1278

Registration Certificate Number 1148185

Engine Name and Model Lycoming 260 HP, P-540-E485

Engine Number L-13791-40

B. Lessee agrees that each unit leased hereunder is of a size, design and capacity selected by Lessee and that Lessee is satisfied that the same is suitable for its purposes and that Lessor has made no representation or warranty with respect to the suitability or durability of any such unit for the purposes and uses of Lessee, or any other representation or warranty, express or implied, with respect thereto, or otherwise Lessor shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused, directly or indirectly, by any unit leased hereunder, or the use or maintenance thereof, or the repairs, servicing or adjustments thereto, or by any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused.

C. Term: Sixty (60) Months.

D. For the use of the above listed aircraft the Lessee hereby agrees to pay the Lessor at the following rate and manner: \$662.10 per month for Sixty (60) months.

E. In accordance with Paragraph 7 of lease, the Lessee shall also obtain and pay for public liability insurance, insuring the Lessor with insurance companies satisfactory to the Lessor, against damages or claims therefor, for personal injuries, not less than \$250,000.00 or certificate of insurance indicating such coverage. Lessee will undertake to defend and pay for all legal and other expenses including attorney's fees in connection with any suit brought against the Lessor by reason of any such claims for damages for personal injuries, death or property damage.

F. The Lessor acknowledges receipt of the sum of \$1,986.45 representing 1st, 55th and 60th months rent. The second month's rent will be due and payable thirty after shipment and thereafter on the same day of each month for the term of this agreement all monthly payments will become due and payable.

G. The Lessee may, by notice in writing to the Lessor at its principal place of business given not less than thirty (30) days prior to the expiration of this schedule, continue to rent the said aircraft at a rental of payable in advance.

H. The Lessor is hereby given the right and privilege upon reasonable prior notice to the Lessee and during Lessee's regular business hours to inspect said aircraft on the premises of the Lessee or wherever the aircraft is located. The aircraft shall be kept by the Lessee at the following location(s) of the Lessor.

I. This schedule shall be deemed to have been made in New York State and shall be interpreted under the laws of the State of New York.

ACCEPTED as a Schedule to and as a part of the above numbered lease this 5th day of March

19 70

Oswaldo Gonzalez, President

LESSEE VIEQUES AIR LINK, INC

LEASING CONSULTANTS INCORPORATED

BY

BY

AUP

A 15

Exhibit "A" Annexed to Complaint



**OPTION TO PURCHASE**

**Leasing Consultants Incorporated**

1044 Northern Boulevard / Roslyn, New York 11576 (516) 484-5000

TO: Vieques Air Link, Inc.  
Box 437  
Vieques, Puerto Rico

1451

April 10, 1970

LEASE NUMBER

DATE

Provided that you shall have made all payments due under the subject lease and provided, further, that there is no default in compliance with any of the terms or conditions thereof, you shall have the option to purchase the equipment covered by said lease in its then condition and at its then location at the termination date of said lease.

This option shall be exercised by delivery of written notice to us at least <sup>1,393.90 receipt of which is acknowledged,</sup> days prior to the termination date of the lease, together with payment of the full net cash price of said equipment as set forth below:

The net cash purchase price will be \$

LEASING CONSULTANTS, INCORPORATED

BY Edward J. L. Smith

TITLE EVP

DATE 4-10-70

## Exhibit "A" Annexed to Complaint

## CERTIFICATE OF CORPORATE RESOLUTION AUTHORIZING LEASE

I, the undersigned, Secretary of VIEQUES AIR LINK, INC.  
DO HEREBY CERTIFY that at a meeting of the Board of Directors of said Corporation, duly and regularly held on the  
4th day of February 1970, a quorum being present, the following resolution was  
unanimously adopted and recorded in the minute book of the said Corporation, kept by me, and are in accordance with  
and pursuant to the charter and by-laws of said Corporation, and are now in full force and effect, to wit:

RESOLVED: that this Corporation enter into a lease or leases with LEASING CONSULTANTS, INCORPORATED  
covering equipment in amounts up to \$ 50,000.00 and that it is further:

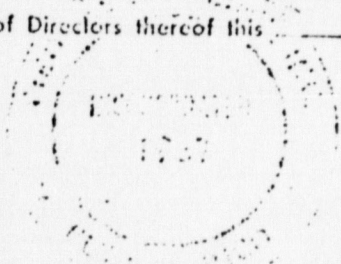
RESOLVED: that any officer of this Corporation may execute on its behalf an agreement of lease together with  
other documents required by said LEASING CONSULTANTS, INCORPORATED.

I further certify that the following are the duly elected officers and stockholders of said Corporation:

Office	Name	% of Ownership	Address
President	Oswaldo Gonzalez		Vieques, Puerto Rico
Vice President	None		
Secretary	Evangelina Gonzalez		same
Treasurer	None		

In witness whereof I have hereunto signed my name and affixed the seal of the Corporation by order of the  
Board of Directors thereof this 4th day of February 1970.

Seal



Evangelina Gonzalez  
Secretary

I, the undersigned, President of the Corporation above named, do hereby certify that the foregoing certificate  
is in all respects true and contains a true copy of the resolution regularly adopted by the Board of Directors of said  
Corporation in the manner therein stated.

Oswaldo Gonzalez  
President

## Exhibit "A" Annexed to Complaint

Consignee, lessee of the foregoing equipment pursuant to the terms and conditions of a lease thereof made by and between the consignee as lessee and LEASING CONSULTANTS, INCORPORATED as lessor hereby accepts delivery of same pursuant to said lease, and by such acceptance acknowledges that same in all respects complies with the requirements of said lease and is of the size, design, and capacity contracted for by consignee as such lessee.

This acknowledgement shall inure solely to the benefit of the aforementioned lessor and shall not in any manner be deemed to constitute the consignee as agent of lessor for the purpose of accepting delivery from the supplier.

VIEQUES AIR LINK, INC

Lessee

*Paul J. ...* *President*  
by

Date April 10, 1970

Lease # 1451

Purchase order #

**FIRST NATIONAL CITY BANK**

By Leasing Consultants Incorporated

On June 23 19 70

**DELIVER TO BANK IN DUPLICATE.** Copy will be returned as a Credit Advice.

Lease No.	Sup. Sch. No.	Lessee's Name and Address	Rental Payments To Be Made		
			Within 5 Years	After 5 Years	Total
1451	1451	Vigues Air Link, Inc. P. O. Box 427 Vieques, Puerto Rico	20,776	-	20,776
		TOTALS	20,776	-	20,776

FOR BANK USE ONLY

	By	Checked
Prepared	_____	_____
Posted	_____	_____

Total Rental Payments To Be Made	\$ 31,725.00
Less: Excluded Rental Payments	\$ 3,510.00
Acceptable Rental Payments	\$ 28,215.00
Today We Credited Your Regular Account At Our Greenpoint Branch with 80%	
of Acceptable Rental Payments	\$ 22,572.00

**FIRST NATIONAL CITY BANK**

Date \_\_\_\_\_ By \_\_\_\_\_

EXHIBIT "B"--ASSIGNMENT OF AFORESAID LEASE TO FIRST  
NATIONAL CITY BANK ANNEXED TO COMPLAINT

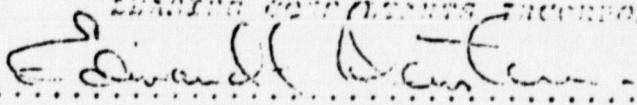
Exhibit "B" Annexed to Complaint

ASSIGNMENT OF LEASES

KNOW ALL MEN that the undersigned, for value received, hereby sells, assigns, transfers and sets over to FIRST NATIONAL CITY BANK (herein called the "Bank"), all of the rights, title and interest of the undersigned in, to and under: (a) each and all of the LEASES designated in the schedule, which appears on the reverse side hereof, and all moneys due, or that may become due, thereon or thereunder; (b) the relative equipment as more fully described in the leases annexed hereto, as security for any and all obligations of the undersigned to the Bank under and pursuant to the Loan and Security Agreement hereinafter described; and (c) any and all guaranties, subordinations and other documents pertaining to said Leases and/or relative equipment.

This assignment is made under and pursuant to that certain Loan and Security Agreement entered into by and between the Bank and the undersigned, dated...~~December 15~~....., 19.., and any amendment(s) thereof.

WITNESS, the signature of the undersigned this ..27..... day of .....~~June~~....., 1979....

LEASING COMPANY, INCORPORATED  
  
 .....

By.....  
 (Title)

2  
2

95-20 63rd Road, Forest Hills, N.Y. 11374

AIRCRAFT LEASE

LEASE NO: 1434

1969 by and between LEASING CONSULTANTS, INCORPORATED, a New York corporation, hereinafter

RAFFA VAN ATTA LTD., 273 East Oakland Park Boulevard, Fort Lauderdale,  
 2  
 lessee"

In consideration of the mutual covenants and promises hereinafter contained, the parties hereto agree as follows:

1. Lessor hereby leases to Lessee and Lessee hereby hires and leases from Lessor the aircraft described in the schedule and/or schedules hereafter executed by the parties hereto and made a part hereof, for the term as fixed in the schedule and/or schedules annexed hereto.
2. The Lessee agrees to pay rent to the Lessor for the use of the aircraft at the rate and in the manner set forth in the schedule and/or schedules annexed and to be annexed hereto, together with the additional rent provided for herein.
3. Lessor agrees to cause the aircraft to be delivered to the Lessee, and Lessee agrees to assume all risks of loss or damage to the aircraft occurring during the delivery of the aircraft to Lessee. Lessor assumes no liability for loss or damage occurring during delivery or arising from late delivery of aircraft. Payment of the agreement by reason of fires, strikes, delays in transportation, failure of any supplier with whom Lessor has contracted to furnish such aircraft to the Lessee, or any cause beyond the control of Lessor, Lessor shall not be liable for specific performance of this lease and delay in delivery of aircraft to Lessee shall not affect the validity of this lease.

Lessor and Lessee agree that Lessor shall not be liable to Lessee for loss of use of the leased property or interruption of Lessee's business if the aircraft fails to function, or be out of use for repairs or service, or for any other cause whatsoever, and any such loss of use shall not relieve Lessee of his obligation to make the lease payments in the amounts and at the times elsewhere provided for in this lease. In no event shall the aircraft be used for purposes other than those set forth in the policies of insurance required herein or as set forth in any application for such insurance.

4. Lessee shall use and operate said aircraft in strict conformity with all of the applicable laws, rules, orders, ordinances and regulations of the United States of America and of any state, and the interested federal and state agencies, and, where applicable, of any of the United States territories or possessions, or of any other country, regarding the use, operation or possession of the aircraft. Lessee will indemnify and hold the Lessor harmless for any victim in, on, over, and against any and all liabilities, claims, suits, demand, penalties, fines and forfeitures which may be asserted against Lessor arising out of Lessee's use, operation or maintenance of said aircraft. Lessee shall operate said aircraft in accordance with the operating instructions furnished by the manufacturer. Lessee shall not operate the aircraft beyond the geographical limits defined in the policies of insurance hereinafter referred to.

Lessee agrees at all times and at its own expense to keep said aircraft in good operative condition and completely airworthy, and further to keep said aircraft in mechanical condition, adequate to comply with all the rules and regulations of the Federal Aviation Agency, or other regulatory body, domestic or foreign, if applicable, and the insurance carriers, and to make necessary repairs thereto at Lessee's expense.

None of the equipment installed on the aircraft at the time of the making of this lease shall be removed by Lessee. No additional equipment, accessory, attachment or device shall be installed in nor structural change made to said aircraft by Lessee without first securing the written approval of Lessor, and Lessee agrees that any equipment so added, and any repairs, replacements, parts, supplies, accessories, attachments and devices so added shall become a part of the leased aircraft and remain with the aircraft as property of the Lessor at the time of the termination of this lease, whether such termination results from expiration of the term or otherwise.

5. Lessee shall immediately and firmly attach in a suitable location on the instrument panel or the surface of the plane a metal plate furnished by Lessor and inscribed, "Property of Lessing Consultants, Inc.", or its assignee, as the case may be. The Lessee shall not mark, deface, mutilate, remove or in any way interfere with the said metal plate and shall notify the Lessor if it should become lost or illegible. Lessee may affix to the airplane any proper advertisement or insignia designed by Lessee to indicate that same is being used in the business of Lessee.

In addition to the rent provided for in the schedule annexed hereto, Lessor shall pay as additional rent an amount equal to the actual transportation costs of such aircraft FOB plant determined by the supplier of the said aircraft, which costs shall be added to and become part of the rental payable with the initial installment of rent, and any insurance charges paid by Lessor under the provisions of this Lease. Should Lessee fail to pay rent due hereunder within ten days after same shall become payable, then in such event Lessee shall pay to Lessor late charges, equal to five cents (5¢) for each dollar of rental payment in arrears per month. The initial rental payment following delivery of aircraft shall be apportioned so as to make uniform the due dates of rental payment for the aircraft leased hereunder mentioned to make all later rental payments payable on the first day of each month thereafter.

- f. Lessee shall cause the aircraft to be operated only by competent operators and shall pay all expenses of operation. Lessor warrants that the aircraft will at all times be operated only by a currently certificated pilot, who shall be qualified within the terms of the policies of insurance required by this lease.

4. Lessor shall not be required to make any repairs to the aircraft or to replace the aircraft or any of its parts, attachments or accessories. Lessor shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused directly or indirectly by the aircraft or by hereunder or by the use or maintenance thereof or repairs, servicing or adjustments thereto or by any delay or failure to provide the same or by an interruption or loss of use thereof or for any loss of business or damage whatsoever and howsoever caused.

8. Upon the expiration of the term or upon earlier termination of this lease, Lessee shall, at its own cost and expense, return the aircraft to the Lessor at such place as Lessor shall specify.

- [illegible]

[illegible]

- (c) If, for a chart, at Lesco's expense, throughout the term of this lease, a ship and aircraft insured on a full value basis for less or a more or the same amount as the full value of the insured ship, insurance to be in each form, and this form and amount as set forth in Schedule A, is procured by Lesco, then the full value of the ship and aircraft, plus such insurance to be by Lesco, shall be added to and become a part of the full value of the ship and aircraft for the purpose of computing the above-mentioned percentage of the full value of the ship and aircraft. Such policy shall contain provisions covering location of warranty and the hundred percent coverage with respect to the ship and aircraft.

11. The Company shall secure and maintain in effect during the term of this Third Liability Insurance a minimum amount of \$1,000,000 per occurrence, including defense and \$1,000,000 per occurrence for the maximum number of covered parties, with coverage limits for each covered party of the policy not less than individually to each of them. Said insurance must be acceptable to each party to these Indentures and to the Trust.

less:

## Exhibit "C" Annexed to Complaint

LEASING CONSULTANTS INCORPORATED

95-20 63rd Road, Forest Hills, N.Y. 11374

## AIRCRAFT SCHEDULE

212-275-1500

TO LEASE NO. 1434 DATED Dec. 9, 1969 BETWEEN LEASING CONSULTANTS INCORPORATED, AS LESSOR AND AS LESSEERAFTA VAN ATTA LTD., 273 East Oakland Park Aboulevard, Fort Lauderdale,  
Florida

All terms and conditions of said lease are in full force and effect with respect to this schedule.

## A. Equipment:

Manufacturer's Name and Trade Name **Beechcraft D50E**

Year Manufactured

Model

Manufacturer's Serial Number **DH-347**

Registration Certificate Number **N553SB**

Engine Name and Model

Engine Number

B. Lessee agrees that each unit leased hereunder is of a size, design and capacity selected by Lessee and that Lessee is satisfied that the same is suitable for its purposes and that Lessor has made no representation or warranty with respect to the suitability or durability of any such unit for the purposes and uses of Lessee, or any other representation or warranty, express or implied, with respect thereto, or otherwise Lessor shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused, directly or indirectly, by any unit leased hereunder, or the use or maintenance thereof, or the repairs, servicing or adjustments thereto, or by any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused.

C. Term: **Sixty (60) Months**

D. For the use of the above listed aircraft the Lessee hereby agrees to pay the Lessor at the following rate and manner: **\$1051.20 per month plus \$42.05 Sales Tax = \$1093.25 per mo.**

E. In accordance with Paragraph 7 of lease, the Lessee shall also obtain and pay for public liability insurance, insuring the Lessor with insurance companies satisfactory to the Lessor, against damages or claims therefor, for personal injuries and death in limits of not less than and against damages of claims therefor, for property damage in the amount of or certificate of insurance indicating such coverage. Lessee will undertake to defend and pay for all legal and other expenses including attorney's fees in connection with any suit brought against the Lessor by reason of any such claims for damages for personal injuries, death or property damage.

F. The Lessor acknowledges receipt of the sum of **\$1093.25** 30 days after shipment and thereafter on the same day of each month for the term of this agreement all monthly payments will become due and payable.

G. The Lessee may, by notice in writing to the Lessor at its principal place of business given not less than thirty (30) days prior to the expiration of this schedule continue to rent the said aircraft at a rental of payable in advance.

H. The Lessor is hereby given the right and privilege upon reasonable prior notice to the Lessee and during Lessee's regular business hours to inspect said aircraft on the premises of the Lessee or wherever the aircraft is located. The aircraft shall be kept by the Lessee at the following location(s): of the Lessor.

I. This schedule shall be deemed to have been made in New York State and shall be interpreted under the laws of the State of New York.

ACCEPTED as a Schedule to and as a part of the above numbered lease this 5th day of December, 19 69

LESSEE RAFTA VAN ATTA LTD.

LEASING CONSULTANTS INCORPORATED

BY [Signature]BY [Signature]

## Exhibit "C" Annexed to Complaint

## CERTIFICATE OF CORPORATE RESOLUTION AUTHORIZING LEASE

I, the undersigned, Secretary of PEPTA VILATTA LTD.

DO HEREBY CERTIFY that at a meeting of the Board of Directors of said Corporation, duly and regularly held on the 8th day of December 19 69, a quorum being present, the following resolution was unanimously adopted and recorded in the minute book of the said Corporation, kept by me, and are in accordance with and pursuant to the charter and by-laws of said Corporation, and are now in full force and effect, to wit:

RESOLVED: that this Corporation enter into a lease or leases with LEASING CONSULTANTS, INCORPORATED covering equipment in amounts up to \$55,000.00 and that it is further:

RESOLVED: that any officer of this Corporation may execute on its behalf an agreement of lease together with other documents required by said LEASING CONSULTANTS, INCORPORATED.

I further certify that the following are the duly elected officers and stockholders of said Corporation:

Office	Name	% of Ownership	Address
President	<u>[Signature]</u>	<u>100%</u>	
Vice President			
Secretary			
Treasurer			

In witness whereof I have hereunto signed my name and affixed the seal of the Corporation by order of the Board of Directors thereof this 8th day of December 19 69.

\_\_\_\_\_  
Secretary

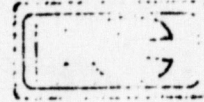
I, the undersigned, President of the Corporation above named, do hereby certify that the foregoing certificate is in all respects true and contains a true copy of the resolution regularly adopted by the Board of Directors of said Corporation in the manner therein stated.

[Signature]

A 24

Exhibit "C" Annexed to Complaint

OPTION TO PURCHASE



LEASING CONSULTANTS INCORPORATED

95-20 63rd Road, Forest Hills, N.Y. 11374

212-275-1500

TO: RAFFA VAN ATTA LTD.  
273 E. Oakland Park Blvd.  
Ft. Lauderdale, Fla.

LEASE NUMBER 1434

DATE December 8, 1969

Provided that you shall have made all payments due under the subject lease and provided, further, that there is no default in compliance with any of the terms or conditions thereof, you shall have the option to purchase the equipment covered by said lease in its then condition and at its then location at the terminal date of said lease.

This option shall be exercised by delivery of written notice to us at least \_\_\_\_\_ days prior to the date as of which purchase is to be effected, together with the full net cash price of said equipment as set forth below:

The net cash purchase price will be \$ 4,380.00 receipt of which is hereby acknowledged.

LEASING CONSULTANTS, INCORPORATED

BY \_\_\_\_\_

TITLE: Executive Vice President

DATE: December 10, 1969

## Exhibit "C" Annexed to Complaint

Consignee, lessee of the foregoing equipment pursuant to the terms and conditions of a lease thereof made by and between the consignee as lessee and LEASING CONSULTANTS, INCORPORATED as lessor hereby accepts delivery of same pursuant to said lease, and by such acceptance acknowledges that same in all respects complies with the requirements of said lease and is of the size, design, and capacity contracted for by consignee as such lessee.

This acknowledgment shall inure solely to the benefit of the aforementioned lessor and shall not in any manner be deemed to constitute the consignee as agent of lessor for the purpose of accepting delivery from the supplier.

RAFFA VAN ATTA LTD.

lessee

by

Date 12/10/69

Lease # 1434

Purchase order #



## Exhibit "D" Annexed to Complaint

## ASSIGNMENT OF LEASES

KNOW ALL MEN that the undersigned, for value received, hereby sells, assigns, transfers and sets over to FIRST NATIONAL CITY BANK (herein called the "Bank"), all of the rights, title and interest of the undersigned in, to and under: (a) each and all of the LEASES designated in the schedule, which appears on the reverse side hereof, and all moneys due, or that may become due, thereon or thereunder; (b) the relative equipment as more fully described in the leases annexed hereto, as security for any and all obligations of the undersigned to the Bank under and pursuant to the Loan and Security Agreement hereinafter described; and (c) any and all guaranties, subordinations and other documents pertaining to said Leases and/or relative equipment.

This assignment is made under and pursuant to that certain Loan and Security Agreement entered into by and between the Bank and the undersigned, dated.... ~~December 15~~....., 19.69... and any amendment(s) thereof.

WITNESS, the signature of the undersigned this ..29th.... day of .....~~December~~....., 19.69...

.. LEASING CONSULTANTS, INCORPORATED.....

By.....  
(Title)

Executive Vice President

**EXHIBIT "E"--AIRCRAFT LEASE BETWEEN LCI AND JAMES W.  
TRUE-CARL G. FISHER CO., LTD. (THIRD  
CAUSE OF ACTION) ANNEXED TO COMPLAINT**

**Leasing Consultants Incorporated**

**LEASE No. 1450**

1044 Northern Boulevard Roslyn, New York 11570 (516) 494-5020

THIS LEASE made this 2 day of March, 1970, by and between LEASING CONSULTANTS INCORPORATED, a New York Corporation, hereinafter called the "Lessor" and James W. True-Carl G. Fisher Co., Ltd., 215 Security Trust Bldg., Miami, Fla. (Bailey Dr., Coral Hbr., Nassau, N.P., Bahamas) hereinafter called "Lessee"

**1. TERM AND RENT.** Lessee agrees to pay the total rental for the term, which shall be the total amount of all rental payments stated in the schedule and/or schedules plus such additional rentals as may arise. All payments of rent shall be made at the offices of Lessor, or at such other place as Lessor may in writing designate. Notices shall be given by certified mail to each party at the address herein.

**2. TITLE.** Lessor shall at all times retain title to the equipment. All documents of title and evidences of delivery shall be delivered to the Lessor. Lessee will not change, mar, deface or remove any insignia or lettering which is on the equipment at the time of delivery thereof or which is thereafter placed thereon and taking Lessor's ownership thereof, and at any time during the lease term, upon request of Lessor, will affix to equipment, in a prominent place, labels, plates or other markings supplied by Lessor stating that equipment is owned by Lessor. Lessor may at Lessee's expense cause this Lease to be filed or recorded, and or refiled or re-recorded, where permitted by law. Lessee shall at its expense protect and defend Lessor's title, at all times keeping the equipment free from any legal process and or encumbrances whatsoever, including but not limited to liens, attachments, levies and executions, and shall give Lessor immediate written notice of each and shall indemnify Lessor from any loss caused thereby.

**3. SCHEDULE.** The Schedule attached hereto is incorporated herein by reference and contains a description of the equipment being leased hereunder and so far as is practicable, contains all specifications relating to the equipment, all regular monthly payments provisions and a renewable schedule, if any.

**4. PURCHASE, DELIVERY AND ACCEPTANCE.** Lessee requests Lessor to purchase the equipment from a seller chosen and approved by Lessee and therefore, Lessee unconditionally accepts the equipment. Nothing to the contrary withstanding, it is agreed that Lessor is not the manufacturer or the supplier of the equipment and Lessee absolves Lessor from any responsibility as to the condition of the equipment and looks only to the manufacturer and or actual supplier for any possible defects. As to any latent or patent and will only look to the aforementioned manufacturer and/or supplier for any other claims. In addition to the rent provided for in the Schedule annexed hereto, Lessee shall pay as additional rent, an amount equal to actual transportation costs of such equipment FOB plant delivered by the supplier of said equipment, which costs shall be added to and become part of the rental payable with the initial installment of rent and any insurance charges paid by Lessor under the provisions of Paragraph Eight of this lease.

**5. CARE AND USE OF EQUIPMENT.** Lessee shall maintain the equipment in good operating condition, repair and appearance, and protect same from deterioration; shall use the equipment in the regular course of its business only, within its normal capacity, without abuse, and in a manner contemplated by the manufacturer thereof; shall cause the equipment to be operated only by competent operators; shall pay all expenses of operation; shall not make modifications, alterations or additions to the equipment, other than normal operating accessories or controls, without the consent of Lessor; shall not so affix the equipment to realty so as to change its nature to real property, and agrees that the equipment shall remain personal property at all times, regardless of how attached or installed; shall keep the equipment on its premises where delivered, and shall not remove the equipment without the consent of Lessor. All modifications, repairs, alterations, operating accessories and controls shall accrue to the equipment and become the property of Lessor. Lessor shall have the right, during normal hours, to enter upon the premises where the equipment is located in order to inspect, observe, or remove same, or otherwise protect Lessor's interest, and Lessee shall cooperate in affording Lessor the opportunity to do same.

If, at the sole discretion of Lessor, Lessee does not maintain, use or operate the equipment as aforesaid, Lessor may forthwith take possession of the equipment wherever said equipment is located and Lessor may then use or dispose of such equipment as it deems in its sole discretion the best means of mitigating any possible damages. Lessor may take possession without any formal or informal notice, court decree, or action at law and in the best way it sees fit and may do so with nothing in the Uniform Commercial Code withstanding. All expenses incidental to this action shall be borne by Lessee.

**6. NET LEASE.** Lessee intends the rental payments in this lease to be net to Lessor, and shall comply with all laws, and shall pay all taxes, license and registration fees and similar charges imposed on the ownership, possession or use of the equipment during the term of this lease. Lessee shall pay Lessor all costs and expenses, including attorney's fees, storage, caretaking, and repossession expenses in connection with the enforcement of Lessor's rights under this lease. In case any charges, costs, taxes or expenses required to be paid by Lessee under this lease shall remain unpaid, Lessor shall have the right to pay same and charge such payments to Lessee as additional rental, to be paid forthwith by Lessee.

**7. INDEMNITY.** Lessee shall and does hereby indemnify and save Lessor harmless from any and all liability arising out of the ownership, selection, purchase, leasing, renting, operation, control, use, maintenance, delivery and/or return of equipment, but shall be credited with any amounts received by Lessor from any insurance procured by Lessee. Said indemnification shall include all costs and expenses incurred by Lessor in connection with any suits or actions resulting from any such liability.

**8. INSURANCE.** Lessee shall keep equipment insured against all risks of loss or damage from every cause whatsoever for not less than the aggregate amount of total rent of the lease, and shall carry public liability insurance, both personal injury and property damage, covering equipment. All such insurance shall be in form and amount and with companies satisfactory to Lessor. All insurance for loss or damage shall provide that losses, if any, shall be payable to Lessor. Lessee, at its own expense, shall pay the premiums therefor and deliver to Lessor the policies of insurance. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor, that it will give Lessor 30 days' prior written notice of the effective date of any alteration or cancellation of such policy. The proceeds of such insurance payable as a result of loss or of damage to equipment, shall be applied (a) toward the replacement, restoration or repair of equipment which may be lost, stolen, destroyed or damaged, or (b) toward payment of the obligations of Lessee hereunder. Notwithstanding, damage or destruction of the equipment shall relieve Lessee of the obligation to pay rent or other obligation under this lease. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute all documents, checks or drafts received in payment for loss or damages under any and all insurance policy. In case of the failure of Lessee to procure or maintain said insurance or to comply with any other provision of this lease, Lessor shall have the right, but shall not be obligated, to effect such insurance or compliance on behalf of and at the expense of Lessee. In that event, all monies spent by and expenses of Lessor in effecting such insurance or compliance shall be deemed to be additional rent, and shall be paid by Lessee to Lessor forthwith. If Lessor determines that any item of equipment is lost, stolen, destroyed or damaged beyond repair, Lessor may, in lieu of the foregoing, require that Lessee pay Lessor in cash all sums then owed by Lessee to Lessor under this lease, together with the unpaid balance of the total rent of said item or items of equipment for the pending term of this lease and an amount equal to 15% (15%) Percent of the actual cost of said item, whereupon Lessor shall assign to Lessee without warranty, expressed or implied, the right, title and interest in the equipment. The parties hereto agree that the said sums will equal the fair value of such item or items on the date of such loss, theft, damage or destruction. Lessee shall provide to Lessor a standard breach of warranty clause satisfactory to Lessor, which shall provide that the insurance carrier shall pay to Lessee any sums occasioned by loss or damage to the property, be it for any reason what ever, whether or not such loss is occasioned by the action of public or third parties.

**9. DEFAULT.** If (a) Lessee shall default in the payment of any rent or in making any other payment hereunder when due, or (b) Lessee shall default in performance of any one of its obligations hereunder, or (c) Lessee shall breach any warranty hereunder, or (d) Lessee shall fail to perform its obligations under this lease, or (e) Lessee shall assign or make an assignment for the benefit of creditors, or (f) Lessee shall become insolvent or makes an assignment for the benefit of creditors, or (g) Lessee shall become bankrupt or insolvent, or (h) Lessee shall be appointed receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of the assets of Lessee, or if such receiver, trustee, conservator or liquidator is appointed without the application or consent of Lessor, or (i) petition is filed by or against Lessee under the Federal Bankruptcy Act or any amendment thereto, including without limitation, a petition for reorganization, arrangement or extension, or under similar state law, or (j) Lessee fails to provide for the relief of debtors, or (k) if Lessee shall permit any lien or encumbrance, other than a lien or liens in favor of Lessor, to be placed upon the equipment for a period of fifteen (15) days, or (l) if Lessee attempts to remove, shift, transfer, subcontract or part with possession of the equipment at any time, or (m) if Lessee permits said equipment to be improperly operated and/or maintained or used, or (n) if Lessee in its sole discretion determines that the equipment has been damaged to an extent permitted by applicable law, Lessor shall have the right to exercise any one or more of the remedies provided herein.

**10. REMEDIES.** In the event of default, Lessor may at its option: (a) declare the entire amount of unpaid rent for the balance of the term of this lease to be immediately due, whereupon the same shall become immediately due and payable; (b) without demand or legal process, enter onto the premises and take possession of and remove same, whereupon all rights of Lessee in equipment shall terminate absolutely; and (c) retain all prior payments of rent and equipment or sell same at public or private sale with or without notice to Lessee, with or without having the equipment at the site, and at which sale Lessor may purchase all or any part of equipment, the proceeds of such sale less expenses of retaining, storage and repairing and reselling and attorneys fees as hereinafter defined to be applied to the payment of the unpaid total rent for the balance of the term of this lease. Lessee remaining liable for the balance of the unpaid total rent and any sums thereafter remaining to be paid to Lessee, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct. Lessee shall be liable for all expenses Lessor may incur in connection with the enforcement of any of its remedies herein, including legal expenses and agreed attorneys fees, equal to Twenty (20%) Percent of the total unpaid balance.

All remedies of Lessor hereunder are cumulative, and may to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of the Lessor to exercise, and no delay in exercising, any right or remedy hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise by Lessor of any right or remedy hereunder preclude any other or further exercise of any other right or remedy.

Whenever any payment is not made when due hereunder, the Lessee shall pay to Lessor or its assigns, at the option of Lessor or its assigns, not later than one month thereafter, an amount calculated at the rate of up to Five (5¢) Cents per One Dollar (\$1.00), of each such delayed payment, if allowed by law, such payment to be liquidated damages occasioned by such delay, inconvenience and all related expenses which cannot be readily calculated.

**11. RISK OF LOSS.** Lessee hereby assumes the entire risk of loss, from any and every cause whatsoever, in event of loss, Lessee at its expense and at Lessor's option shall either (a) repair the equipment, returning it to its previous condition; or (b) replace same with like equipment acceptable to Lessor and in good condition and equivalent value, which shall become property of the Lessor, or (c) pay Lessor all unpaid rents or such unpaid rents as may be allocated to specific items of equipment. Upon replacement or payment, this Lease shall terminate with respect to replaced or paid for equipment, and Lessee shall take title to same on an as-is basis. In case Lessee shall fail to repair, replace or pay for same, Lessor may repair at Lessee's expense, to be charged as additional rental, payable forthwith.

**12. OTHER COVENANTS AND WARRANTIES OF LESSEE.** Lessee agrees that its obligations under this Lease are absolute, and shall continue in full force and effect regardless of any disability of Lessee to use the equipment because of war, act of God, governmental regulations, strike, loss or damage, obsolescence, breach of contract or warranty, failure of or delay in delivery, misdelivery or any other cause, and that its obligations shall not abate due to any claim or set-off against Lessor. Each and every covenant and agreement contained in this Lease shall be for all purposes construed to be a separate and independent covenant and agreement and the breach of any covenant or agreement contained herein by Lessor shall in no way or manner discharge or relieve Lessee from Lessee's obligation to perform each and every covenant and agreement contained herein. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances, other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and shall be enforced to the fullest extent permitted by law.

In any action which may be instituted for payment of any sums which may be due, whether instituted by Lessor or any assignee of Lessor, Lessee shall not interpose any defenses, set-offs, or counterclaims of any kind. Any alleged defenses, counterclaims or set-offs may be redressed by Lessee by means of independent action, which action may not be consolidated, however, with any pending action by Lessor, or any assignee of Lessor, against Lessee. Lessee warrants that the application, statements and financial reports submitted by it to Lessor are material inducements to the granting of this Lease, and any misrepresentations, shall constitute default. Lessee agrees that Lessor has made no warranties or representation, express or implied, with regard to the equipment. Lessee agrees to procure for Lessor such stoppage certificates, landlord's and mortgagee's waivers or other similar documents as Lessor or its assignees may reasonably request. Lessee agrees to furnish its certified annual financial statement, certified without qualification by independent certified public accountants, and such interim statements as Lessor may require. Lessee agrees not to sublet, assign or otherwise transfer its rights hereunder without the written consent of Lessor. Lessee warrants that this Lease has been duly authorized and that no provision of this Lease is inconsistent with Lessee's charter, by-laws or any loan or credit agreement or other instrument or arrangement to which Lessee is a party or by which Lessee or its property may be bound or affected.

**13. ASSIGNMENT.** Lessor and its successors and assigns may assign or reassign, or grant a security interest in this lease and/or the equipment covered hereby, in whole or in part without prior notice to lessee. Each such assignee or secured party shall have all of the rights but none of the obligations of Lessor under this Lease. Subject to the foregoing, this lease inures to the benefit of and is binding upon the heirs, legatees, personal representatives, survivors, successors and assigns of the parties hereto.

**14. REDELIVERY.** At the expiration of this lease, Lessee shall, at its expense, deliver the equipment at an address specified by Lessor, and in the same condition as received, less normal depreciation and wear.

**15. SUPPLEMENTAL LEASES; SCHEDULES; AMENDMENTS; LEASES WITH PARENTS, SUBSIDIARIES OR AFFILIATES.** In order to facilitate future transactions, Lessor and Lessee agree that the terms of this lease are by reference incorporated into certain supplemental leases or any instrument which the parties enter into for the leasing of equipment. This lease and all such supplemental leases shall be independent contracts, the rights and remedies thereunder arising severally, but any default on one lease shall be a default on all leases between the parties; and further a default in any lease between Lessor and any of Lessee's parents, subsidiaries and affiliates shall be deemed a default hereunder. Except as provided above, this lease contains the entire agreement between the parties, and may not be altered, modified, terminated or discharged except in writing. Where a noun form used herein is inappropriate the singular or plural form, whichever is appropriate, shall be deemed substituted therefor.

**16. RENEWAL.** Lessee shall have the option, if not in default, upon 30 days written notice to Lessor prior to the termination herein, to renew this lease at an annual rent specified herein payable in advance.

**17. Nothing to the contrary notwithstanding,** Lessee assumes absolute and total responsibility for delivery of equipment to itself and absolves Lessor from any and all responsibility. It covenants and warrants that it shall use, operate and maintain all equipment pursuant to all applicable laws of the Federal State, District and foreign governments wherein such equipment is located. It shall operate and maintain the equipment leased herein by competent and properly trained personnel and if applicable, said personnel shall be properly licensed pursuant to all applicable laws. If the equipment herein is an aircraft, it is specifically agreed that any and all parts and/or modifications shall be those designated by the manufacturer of the equipment and certificated by the pertinent Federal authorities and that such aircraft shall always be maintained in an airworthy and licensed configuration.

**18. If for any reason there is a damage or loss concerning the equipment,** Lessee shall forthwith report such loss on proper forms to the insurance carrier covering and insuring the equipment and shall notify in writing any required governmental agency and Lessor. The equipment shall be located only in those areas agreed to in writing by Lessor and removal from any such agreed area shall be deemed an absolute breach of this lease.

## Exhibit "E" Annexed to Complaint

19. Lessor may grant a security interest in or mortgage any of the equipment leased hereunder. This lease is subject and subordinate to all security agreements (mortgages) which may now or hereafter be placed thereon by Lessor, and to all renewals, modifications, replacements and extensions thereof. This lease shall be self-operating and no further instruments of subordination shall be necessary. Lessee shall promptly execute any certificates required; Lessee appoints Lessor its attorney-in-fact to execute any such certificates for and on its behalf.

20. Nothing to the contrary withstanding, it is specifically agreed that time is of the essence concerning any of the covenants and obligations of Lessee.

21. EXECUTION: LAWS GOVERNING. This lease shall be binding when accepted by Lessor at New York, N. Y., and except for local recording acts, shall be governed by the laws of the State of New York. The parties waive trial by jury in any action brought on this lease. Notwithstanding anything contained above in the event of any dispute hereunder Lessor may in its sole discretion direct that such dispute be determined by arbitration by the American Arbitration Association in the City of New York in accordance with its then current laws.

22. Lessee hereby designates

Corp. as its agent for service of process in any action arising out of this lease.

This lease shall be binding upon the parties, their successors, legal representatives and assigns, but only that counterpart hereof procured by Lessor and delivered to Lessee effective by delivery to transfer the rights of Lessor. Lessee authorizes Lessor to file a financing statement covering this transaction in any applicable jurisdiction. If the parties have adopted the Uniform Commercial Code and at Lessor's request, Lessee will join Lessor in executing financing statements pursuant to the Uniform Commercial Code. Lessee authorizes Lessor to file financing statements, signed only by Lessor in all jurisdictions where permitted by law. Even though it is a statement of joint ownership, the parties agree that Lessor is the owner of the equipment and no financing statement is required, Lessor may at its sole discretion file a financing statement for informational purposes only.

LEASING CONSULTANTS INCORPORATED

By

*Edward J. Goldstein* EJP

James W. True

LESSEE

Carl G. Fisher Co., Ltd.

By

*James W. True*

ATTEST

## Exhibit "E" Annexed to Complaint

## SCHEDULE

## Leasing Consultants Incorporated

1044 Northern Boulevard / Roslyn, New York 11576 / (516) 434-5000

TO LEASE NO. 1450 DATE March 2, 1970 BETWEEN LEASING CONSULTANTS INCORPORATED, AS LESSOR AND AS LESSEE

James W. True

Carl G. Fisher Co., Ltd. (Bailey Drive, Coral Harbor  
 215 Security Trust Bldg. Nassau, New Providence, Bahamas)  
 Miami, Florida

All terms and conditions of said lease are in full force and effect with respect to this schedule.

A. Equipment: New 1969 Piper PA 28-200R Cherokee Arrow, N2996R,  
 manufacturer's Serial Number 28R-35388, Lycoming 200 horsepower  
 model number 10-360-C1C. Additional equipment as follows:  
 (2) Narco Mark 12's and VOA-40's, Narco ADF 31A, Narco AT-6A  
 Transponder and Piper Autocontrol III. (end)

B. Term: Sixty (60) Months.

C. For the use of the above listed Equipment the Lessee hereby agrees to pay the Lessor at the following rate and manner: \$571.66  
~~plus \$28.58 sales tax for a total monthly payment of \$600.24.~~

D. The Lessor acknowledges receipt of the sum of \$1,714.98 representing the 1st, 59th & 60th  
 months rent.

The second month's rent will be due and payable thirty days after shipment and thereafter on the same day  
 of each month for the term of this agreement all monthly payments will become due and payable.

E. The Lessor is hereby given the right to inspect said Equipment on the premises of the Lessee or wherever the Equipment is located. The Equipment  
 shall be kept by the Lessee at the following location(s):

F. This schedule shall be deemed to have been made in New York State and shall be interpreted under the laws of the State of New York.

ACCEPTED as a Schedule to and as a part of the above numbered lease this 2 day of March 19 70.

James W. True

LESSEE Carl G. Fisher Co., Ltd.

BY

LEASING CONSULTANTS INCORPORATED

ATTEST

BY

Edward J. Hunter

RIP

## Exhibit "E" Annexed to Complaint

## OPTION TO PURCHASE

LEASING CONSULTANTS INCORPORATED

95-20 63rd Road, Forest Hills, N.Y. 11374

212-275-1500

TO: James W. True  
Carl G. Fisher Co., Ltd.  
215 Security Trust Bldg.  
Miami, Florida  
(Bailey Drive, Coral Harbor, Nassau, New  
Providence, Bahamas)

LEASE NUMBER 1450

DATE March 2, 1970

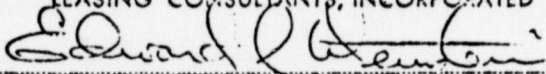
Provided that you shall have made all payments due under the subject lease and provided, further, that there is no default in compliance with any of the terms or conditions thereof, you shall have the option to purchase the equipment covered by said lease in its then condition and at its then location at the terminal date of said lease.

This option shall be exercised by delivery of written notice to us at least \_\_\_\_\_ days prior to the date as of which purchase is to be effected, together with the full net cash price of said equipment as set forth below:

The net cash purchase price will be \$ 1,203.50, upon signing of lease, receipt of which is acknowledged, and \$1,203.50 at the terminal date of said lease.

LEASING CONSULTANTS, INCORPORATED

BY \_\_\_\_\_



Edward J. Weinstein

TITLE Executive Vice President

DATE March 2, 1970

## Exhibit "E" Annexed to Complaint

Consignee, lessee of the foregoing equipment pursuant to the terms and conditions of a lease thereof made by and between the consignee as lessee and LEASING CONSULTANTS, INCORPORATED as lessor hereby accepts delivery of same pursuant to said lease, and by such acceptance acknowledges that same in all respects complies with the requirements of said lease and is of the size, design, and capacity contracted for by consignee as such lessee.

This acknowledgement shall inure solely to the benefit of the aforementioned lessor and shall not in any manner be deemed to constitute the consignee as agent of lessor for the purpose of accepting delivery from the supplier.

James W. True

Lessee

by

Date March 2, 1970

Lease # 1450

Purchase order #

**SCHEDULE OF LEASES  
OFFERED TO  
FIRST NATIONAL CITY BANK  
Time Contracts Section**

By LEASING CONSULTANTS INCORPORATED

On July 24 1970

DELIVER TO BANK IN DUPLICATE. Copy will be returned as a Credit Advice.

Lease No.	Sup. Sch. No.	Lessee's Name and Address	Rental Payments To Be Made		
			Within 5 Years	After 5 Years	Total
1450	1450	James W. True Bailey Drive, Coral Harbor Nassau, New Providence, Bahamas	\$4,298.60	-0-	\$4,298.60
		TOTALS			

FOR BANK USE ONLY

	By	Checked
Prepared	_____	_____
Posted	_____	_____

Total Rental Payments To Be Made	\$ 74,289.60
Less: Excluded Rental Payments	\$ 2,853.30
Acceptable Rental Payments	\$ 31,441.30
Today We Credited Your Regular Account At Our _____ Branch with _____%	
of Acceptable Rental Payments	\$ 25,153.04

**FIRST NATIONAL CITY BANK**

Date \_\_\_\_\_ By \_\_\_\_\_

EXHIBIT "F"--ASSIGNMENT OF AFORESAID LEASE TO FIRST  
NATIONAL CITY BANK ANNEXED TO COMPLAINT

*Exhibit "F" Annexed to Complaint*

ASSIGNMENT OF LEASES

KNOW ALL MEN that the undersigned, for value received, hereby sells, assigns, transfers and sets over to FIRST NATIONAL CITY BANK (herein called the "Bank"), all of the rights, title and interest of the undersigned in, to and under: (a) each and all of the LEASES designated in the schedule, which appears on the reverse side hereof, and all moneys due, or that may become due, thereon or thereunder; (b) the relative equipment as more fully described in the leases annexed hereto, as security for any and all obligations of the undersigned to the Bank under and pursuant to the Loan and Security Agreement hereinafter described; and (c) any and all guaranties, subordinations and other documents pertaining to said Leases and/or relative equipment.

This assignment is made under and pursuant to that certain Loan and Security Agreement entered into by and between the Bank and the undersigned, dated....., 19....., and any amendment(s) thereof.

WITNESS, the signature of the undersigned this ..... day of ....., 19.....

By.....

(Title)

DEFENDANT'S NOTICE OF MOTION DATED MAY 2, 1973 TO  
DISMISS COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

73 Civ. 1722

NOTICE OF MOTION

Plaintiff,

-against-

FIRST NATIONAL CITY BANK,

Defendant.

-----X

TO: HAHN, HESSEN, MARGOLIS & RYAN  
Attorneys for Plaintiff  
350 Fifth Avenue  
New York, New York 10001

PLEASE TAKE NOTICE, that upon the complaint in the  
above entitled action dated April 16, 1973, the under-  
signed will move United States District Judge Arnold  
Bauman, in Court Room 1506, Federal Court House, Foley  
Square, New York, New York 10007, on the 14th day of May,  
1973, at 9:30 o'clock in the forenoon of that day or as  
soon thereafter as counsel can be heard, for an order  
pursuant to Rule 12(b)(6) of the Federal Rules of Civil  
Procedure, dismissing each of the four causes of action  
contained in the above described complaint, for failure to  
state claims upon which relief can be granted, upon the

*Defendant's Notice of Motion Dated May 2, 1973 to  
Dismiss Complaint*

ground that each of the aforementioned four causes of action are time-barred by Section 11(e) of the Bankruptcy Act (11 U.S.C. Section 29(e)) in that this action was not instituted by the plaintiff Trustee within two years subsequent to the date of adjudication in bankruptcy of the above named bankrupt, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York  
May 2, 1973

Yours, etc.

ZALKIN & COHEN

By: HENRY LEWIS GOODMAN  
A Member of the Firm  
Attorneys for Defendant  
First National City Bank  
750 Third Avenue  
New York, New York 10017  
Tel.: (212) 682-6900

PLAINTIFF'S NOTICE OF CROSS-MOTION FOR SUMMARY  
JUDGMENT DATED MAY 8, 1973

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE FELDMAN, as Trustee in	:	73 Civ. 1722
Bankruptcy of Leasing Consul-	:	(Bauman, J.)
ants Incorporated, Bankrupt.	:	
Plaintiff,	:	
-against-	:	<u>CROSS-MOTION</u>
FIRST NATIONAL CITY BANK,	:	
Defendant.	:	

-----X

Plaintiff moves the court as follows:

1. That it enter pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiff's favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiff is entitled to a judgment as a matter of law; or, in the alternative,

2. If summary judgment is not rendered in plaintiff's favor upon the whole case or for all the relief asked and a trial is necessary, that the court, at the hearing on the motion, by examining the pleadings and the evidence before it, and by interrogating counsel, ascertain what material facts are actually and in good faith controverted, and thereupon make an order specifying the facts that appear without

*Plaintiff's Notice of Cross-Motion for Summary  
Judgment Dated May 8, 1973*

substantial controversy and directing such further proceedings  
in the action as are just.

This motion is based upon:

(a) Pleadings;

(b) Affidavit of Daniel A. Zimmerman, Esq.

dated May 8, 1973.

Dated: New York, New York  
May 8, 1973

HAHN, HESSEN, MARGOLIS & RYAN

By: *George A. Hahn*

Attorneys for Plaintiff  
350 Fifth Avenue  
New York, New York 10001  
Tel.: (212) 736-1000

To: Zalkin & Cohen  
Attorneys for Defendant  
750 Third Avenue  
New York, New York 10017

Please take notice that the undersigned will bring  
the above cross-motion on for hearing before this Court at  
Room 1506, United States Court House, Foley Square, City of  
New York, on the 14th day of May, 1973, at 9:30 o'clock in  
the forenoon of that day or as soon thereafter as counsel  
can be heard.

HAHN, HESSEN, MARGOLIS & RYAN

By: *George A. Hahn*

Attorneys for Plaintiff  
350 Fifth Avenue  
New York, New York 10001

PLAINTIFF'S SUMMARY STATEMENT PER LOCAL GENERAL RULE 9(g)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE FELDMAN, as Trustee in	:	73 Civ. 1722
Bankruptcy of Leasing Consul-	:	(Bauman, J.)
tants Incorporated, Bankrupt,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
FIRST NATIONAL CITY BANK,	:	
	:	
Defendant.	:	

-----X

STATEMENT OF MATERIAL  
FACTS PURSUANT TO  
GENERAL RULE 9(g)

The following is plaintiff's statement of the material facts as to which there is no genuine issue to be tried:

1. On August 18, 1970 Leasing Consultants Incorporated ("LCI"), a New York corporation, filed a petition for arrangement under Chapter XI of the Bankruptcy Act in the United States District Court for the Eastern District of New York.

2. By order dated October 16, 1970 LCI was adjudicated a bankrupt.

*Plaintiff's Summary Statement Per Local General Rule 9(g)*

3. Plaintiff is the duly qualified and acting trustee in bankruptcy of the estate of LCI.

4. On or about March 5, 1970, LCI, as lessor, and Vieques Air Link, Inc. ("Vieques"), as lessee, executed an "Aircraft Lease" covering aircraft registration # N4818S.

5. The Bankrupt paid the sum of \$27,878.00 for N4818S.

6. Under said lease Vieques was to pay total rentals of \$39,726.00 at a rate of \$662.10 per month for a term of sixty months.

7. The rentals under the Vieques lease are substantially equivalent to the value of the aircraft.

8. LCI granted Vieques an option to purchase N4818S upon completion of the lease term for the sum of \$1,393.90.

9. Vieques paid the option price to LCI upon execution of the lease.

*Plaintiff's Summary Statement Per Local General Rule 9(g)*

10. The Vieques lease is a conditional sales contract as defined at 49 U.S.C. §1301(16).

11. On or about June 23, 1970, LCI assigned the Vieques lease to First National City Bank ("Bank").

12. Said assignment was as security for LCI's obligations to Bank.

13. The Vieques lease was not filed for recordation with the office of the Administrator of the Federal Aviation Administration ("Administrator").

14. The assignment of the Vieques lease was not filed for recordation with the Administrator.

15. As of May 1, 1973 and subsequent to August 18, 1970, Bank has received thirty-two (32) payments of \$662.10 from the Vieques lease, or the sum of \$21, 187.20.

16. On or about December 8, 1969, LCI, as lessor, and Raffa Van Atta, Ltd. ("Raffa"), as lessee, executed an "Aircraft Lease" covering aircraft registration # N558SB.

*Plaintiff's Summary Statement Per Local General Rule 9(g)*

17. The Bankrupt paid the sum of \$43,800.00 for N558SB.

18. Under said lease Raffa was to pay total rentals of \$65,595.00 at a rate of \$1,093.25 per month for a term of sixty months.

19. The rentals under the Raffa lease are substantially equivalent to the value of the aircraft.

20. LCI granted Raffa an option to purchase N558SB upon completion of the lease term for the sum of \$4,380.00.

21. Raffa paid the option price to LCI upon execution of the lease.

22. The Raffa lease is a conditional sales contract as defined at 49 U.S.C. §1301(16).

23. On or about December 29, 1969, LCI assigned the Raffa lease to Bank.

24. Said assignment was as security for LCI's obligations to Bank.

*Plaintiff's Summary Statement Per Local General Rule 9(g)*

25. The Raffa lease was not filed for recordation with the Administrator.

26. The assignment of the Raffa lease was not filed for recordation with the Administrator.

27. As of May 1, 1973 and subsequent to August 18, 1970, Bank has received thirty-two (32) payments of \$1,093.25 from the Raffa lease, or the sum of \$34,984.00.

28. On or about March 2, 1970, LCI, as lessor, and James W. True ("True"), as lessee, executed an "Aircraft Lease" covering aircraft registration # N2996R.

29. The Bankrupt paid the sum of \$24,070.00 for N2996R.

30. Under said lease True was to pay total rentals of \$34,299.60 at a rate of \$571.66 per month for a term of sixty months.

31. The rentals under the True lease are substantially equivalent to the value of the aircraft.

*Plaintiff's Summary Statement Per Local General Rule 9(g)*

32. LCI granted True an option to purchase N2996R upon completion of the lease term for the sum of \$2,407.00.

33. True paid one half of the option price, \$1,203.50, upon execution of the lease.

34. The True lease is a conditional sales contract as defined at 49 U.S.C. §1301(16).

35. On or about July 24, 1970, LCI assigned the True lease to Bank.

36. Said assignment was as security for LCI's obligations to Bank.

37. The True lease was not filed for recordation with the Administrator

38. The assignment of the True lease was not filed for recordation with the Administrator.

39. On or about September 10, 1970 the True lease was paid out for \$24,226.93.

*Plaintiff's Summary Statement Per Local General Rule 9(g)*

40. Bank received said sum of \$24,226.93.

\* \* \* \* \*

Dated: New York, New York  
May 8, 1973

HAHN, HESSEN, MARGOLIS & RYAN  
Attorneys for Plaintiff

By: 

350 Fifth Avenue  
New York, New York 10001  
Tel.: (212) 736-1000

AFFIDAVIT OF DANIEL ZIMMERMAN IN SUPPORT OF CROSS-  
MOTION AND IN OPPOSITION TO DEFENDANT'S MOTION  
SWORN TO ON MAY 8, 1973

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE FELDMAN, as Trustee in	:	73 Civ. 1722
Bankruptcy of Leasing Consul-	:	(Bauman, J.)
ants Incorporated, Bankrupt,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	<u>AFFIDAVIT</u>
	:	
FIRST NATIONAL CITY BANK,	:	
	:	
Defendant.	:	
	:	

-----X

DANIEL A. ZIMMERMAN, being duly sworn, deposes and  
says:

1. I am an attorney at law associated with the  
law firm of Hahn, Hessen, Margolis & Ryan, attorneys for  
George Feldman, trustee in bankruptcy of Leasing Consultants  
Incorporated, bankrupt, the plaintiff herein.

2. This affidavit is submitted in opposition to  
defendant's motion to dismiss and in support of plaintiff's  
motion for summary judgment.

\* \* \* \* \*

*Affidavit of Daniel Zimmerman in Support of Cross-  
Motion and in Opposition to Defendant's Motion  
Sworn to on May 8, 1973*

5. The Bankrupt's records indicate that:

(a) The Bankrupt paid the sum of \$27,878.00 to Miami Piper Corp. for the purchase of aircraft N4818S. A copy of the check used for payment is attached, marked exhibit "B".

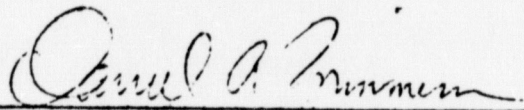
(b) The Bankrupt paid the sum of \$43,800.00 to Miami Piper Corp. for the purchase of aircraft N558SB. Copies of two letters indicating that a draft in the sum of \$43,800.00 was drawn against the bankrupt are attached and marked exhibits "C-1" and "C-2".

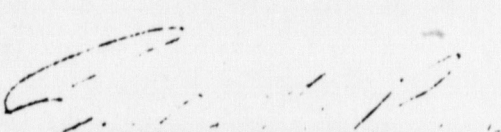
(c) The Bankrupt paid the sum of \$24,070.00 to Miami Piper Corp. for the purchase of aircraft N2996R. A copy of the transmittal letter is attached, marked exhibit "D".

(d) In September, 1970 True paid out his lease for \$24,226.93.

Dated: New York, New York  
May 8, 1973

Sworn to before me this  
day of May, 1973

  
\_\_\_\_\_  
DANIEL A. ZIMMERMAN

  
\_\_\_\_\_  
NOTARY PUBLIC

CECILIA M. BRUNO  
Notary Public, State of New York  
No. 41-427300  
Qualified in Queens County  
Commission Expires March 30, 1974

EXHIBIT "B" -- LCI CHECK TO ORDER OF MIAMI PIPER CORP. DATED  
 APRIL 10, 1970 RE: VIEQUES AIR LINK LEASE  
 ANNEXED TO PLAINTIFF'S CROSS-MOTION

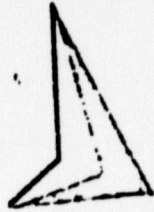
A 49

BY ENDORSEMENT THIS CHECK WHEN PAID IS ACCEPTED IN FULL PAYMENT OF THE FOLLOWING ACCOUNT		LEASING CONSULTANTS INCORPORATED		3376
DATE	AMOUNT	93-20 63RD ROAD		
		FOREST HILLS, N. Y. 11375		
N 4818		PAY TO THE ORDER OF	MIAMI PIPER CORP.	APRIL 10 1970 $\frac{1.970}{21370}$
				\$ 27878.00
		THE SUM OF 27878 DOLS 10/100		DOLLARS
		FIRST NATIONAL CITY BANK		LEASING CONSULTANTS INC.
		MANHATTAN AVE. AT NOBLE ST.		
		BROOKLYN, N. Y.		
		⑆0210⑉0005⑆ 07334323⑆		

VIEQUES AIR LINK INC. LEASE # 1451  
 N 4818 S.

EXHIBIT "C-1"--ACKNOWLEDGMENT BY RICHARD JOHNSON OF  
RESPONSIBILITY FOR AIRCRAFT LEASE BY  
RAFFA INDUSTRIES, LTD., ETC. ANNEXED  
TO PLAINTIFF'S CROSS-MOTION

MIAMI



PIPER

LEW PETERS, President  
LEONARD HINES, JR., Vice Pres.  
B.G. LARY, M.D., Vice Pres.  
HENRY MANGLES, Sec. - Treas.  
DENNIS D. TUEL, Gen. Mgr.

CORPORATION

TAMiami AIRPORT  
P.O. BOX 156  
MIAMI, FLORIDA 33156  
PHONE: 233-0310

*Dec. 19, 1969*

I, Richard Johnson, the undersigned, acting on behalf  
of Mr. John Raffa, Raffa Industries Limited, et-al, P. O.  
Box 4602, Nassau, Bahamas, do hereby accept full responsibility  
for BEECHCRAFT N-558SB, Serial Number D11-347, and operation  
of same until such time that the purchase of same is completed  
in the amount of forty-three thousand, eight hundred dollars  
and no cents (\$43,800.00); these funds presently being acquired  
by draught through Leasing Consultants Incorporated, care of  
First National City Bank, Brooklyn, New York.

WITNESS

*Nancy Pierce*  
NANCY PIERCE

*Richard Johnson*  
Richard Johnson  
Raffa Industries Ltd.

Receipt of check in the amount of seven thousand dollars  
(\$7,000.00) is herewith acknowledged as security deposit on  
the above described aircraft, and is refundable to Raffa  
Industries Limited upon receipt of draughted funds in the  
amount of forty-three thousand, eight hundred dollars (\$43,800.00).

*R. H. Campbell*  
R. H. Campbell  
Miami Piper Corporation



EXHIBIT "C-2"--LETTER DATED NOVEMBER 25, 1969 FROM  
DICK CAMPBELL OF MIAMI PIPER CORP.  
TO LCI RE: RAFFA LEASE OF AIRCRAFT  
ANNEXED TO PLAINTIFF'S CROSS-MOTION

MIAMI



PIPER

CORPORATION

TAMiami AIRPORT

P.O. BOX 156

MIAMI, FLORIDA 33156

PHONE: 233-0310

LEW PETERS, President  
LEONARD HINES, JR., Vice Pres.  
B.G. LARY, M.D., Vice Pres.  
HENRY MANGLES, Sec. - Treas.  
DENNIS D. TUEL, Gen. Mgr.

November 25, 1969

Leasing Consultants Inc.  
95-20 63rd. Road  
Forest Hills, New York 11374

Mr. Ed. Weinstein

Dear Mr. Weinstein:

Mr. Bernstein suggested that I correspond with you to advise you that our bank is this date submitting a draught to the First National City Bank, Green Point Branch, Brooklyn, New York, to the attention of Mr. Joseph Schneider in the amount of forty-three thousand, eight hundred dollars (\$43,800.00) for Beechcraft N558SB. This aircraft is being leased to Mr. John Raffa, Jr.

Please be advised that the FAA still shows this aircraft registered as 588W, however, N558SB is being reserved by the FAA and is the number presently painted on the aircraft. We have just determined that the previous owner did not complete the paperwork with the FAA. This, of course, will be completed upon the submission of the Bills of Sale and the registration application being submitted to you by draught.

We have been advised by Mr. Bernstein and Mr. Raffa that there shall be no delay in honoring the subject draught promptly. Please contact me if any further assistance is necessary to expedite this transaction.

Very truly yours,

*Dick Campbell*  
Dick Campbell

NHC:neb

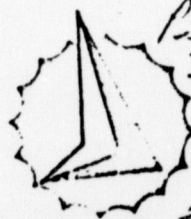
cc: Mr. Joseph Schneider  
First National City Bank

EXHIBIT "D"--LETTER DATED APRIL 3, 1970 FROM LCI TO  
MR. DENNIS TUEL OF MIAMI PIPER CORP.  
RE: AIRCRAFT LEASE BY JAMES W. TRUE  
ANNEXED TO PLAINTIFF'S CROSS-MOTION

*Tuel*

April 3, 1970

Mr. Dennis Tuel  
Vice President  
Miami Piper Corporation  
Tamiami Airport  
P. O. Box 156  
Miami, Florida 33156



MIAMI  
PIPER  
CORPORATION

*Please notify pronto  
if there will be  
any delay in  
expediting funds*

DICK CAMPBELL  
WHOLESALE SPECIALIST

TAMIAM AIRPORT  
P.O. BOX 156  
MIAMI, FLA. 33156  
PHONE 1-331-1515

Dear Mr. Tuel:

In accordance with your conversation with Mr. Miller,  
we are enclosing herewith our check in the amount of  
\$24,070.00 in payment of N2996R.

Sincerely,

EDWARD J. WEINSTEIN  
Executive Vice President

EJW:clr  
encl.

AFFIDAVIT OF LOUIS KOLLANDER OF FIRST NATIONAL CITY  
BANK SWORN TO JUNE 12, 1973 IN OPPOSITION TO  
PLAINTIFF'S CROSS-MOTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----

GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

73 Civ. 1722  
(Bauman, J.)

Plaintiff,

AFFIDAVIT

-against-

FIRST NATIONAL CITY BANK,

Defendant.  
-----X

STATE OF NEW YORK       )  
                              : SS.:  
COUNTY OF NEW YORK     )

LOUIS A. KOLLANDER, being duly sworn, deposes and  
says:

1. I am a Vice President of defendant First  
National City Bank (hereafter "Citibank") and make this  
affidavit in opposition to the cross-motion by the plaintiff-  
Trustee for summary judgment on all of the causes of  
action asserted in the complaint herein.

2. I have knowledge of the matters hereinafter  
related.

3. On or about December 15, 1969, Leasing Con-  
sultants Incorporated ("Bankrupt") and Citibank entered  
into a certain loan and security agreement, a copy of which  
is annexed hereto, marked Exhibit "1" and made a part  
hereof.

*Affidavit of Louis Kollander of First National City  
Bank Sworn to June 12, 1973 in Opposition to  
Plaintiff's Cross-Motion*

4. Pursuant to the provisions of the loan and security agreement, Citibank agreed to assist the Bankrupt in its business of purchasing equipment and leasing the same to its customers by making loans to the Bankrupt, secured by the assignments of the particular lease offered by the Bankrupt to Citibank and a continuing security interest in the property leased.

5. At all material times involved herein, the Bankrupt maintained its principal office at 95-20 63rd Road, Forest Hills, Queens County, New York.

6. On December 30 and December 31, 1969, Citibank filed UCC-1 financing statements against the Bankrupt with the Registrar of the City of New York, Queens County Division and the Secretary of State of the State of New York. Photostat copies of those UCC-1 financing statements are attached herewith, marked Exhibit "2" collectively, and made a part hereof.

7. The lease between the Bankrupt and Vieques Air Line, Inc. (hereafter "Vieques") involved in the first cause of action, was assigned by the Bankrupt to Citibank on or about July 30, 1970. The schedule and assignment attached as Exhibit B to the Trustee's complaint was not the schedule and assignment delivered to Citibank. A true

*Affidavit of Louis Kollander of First National City  
Bank Sworn to June 12, 1973 in Opposition to  
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copy of the Vieques schedule of lease and the assignment thereof to Citibank is attached herewith, marked Exhibit "3" and made a part hereof. Citibank did not advance any moneys to the Bankrupt. With respect to the Vieques lease, that lease was assigned to and delivered to Citibank as partial collateral for an advance which had been made by Citibank to the Bankrupt in connection with a lease between the Bankrupt and Tiny Tim Enterprises, Inc., under which there had been a default in the required rentals from the inception. The True lease was also assigned to Citibank for the same purpose. A true copy of the specific assignment of the Music Merchants lease is annexed hereto as Exhibit "4". All of the four leases involved were physically delivered by the Bankrupt to Citibank.

8. According to the records of Citibank, the Trustee's statement of fact pursuant to General Rule 9(g) of the General Rules of this Court is factually incorrect in the following respects:

(a) Citibank received 33 payments of \$662.10 under the Vieques lease, or the aggregate sum of \$21,849.30, not 32 payments aggregating \$21,187.20, as alleged in paragraph 15 of the statement;

(b) Citibank received 25 payments under the

*Affidavit of Louis Kollander of First National City  
Bank Sworn to June 12, 1973 in Opposition to  
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Raffa lease aggregating \$27,331.25, not 32 payments aggregating \$34,984, as claimed in paragraph 27 of the statement;

(c) the total amount paid to Citibank under the True lease was \$23,438.06, not \$24,226.93, as alleged in paragraphs 39 and 40 of the statement;

(d) while Exhibits C-1 and C-2, attached to the Zimmerman affidavit, reveal that Citibank may have known of the amount paid by the Bankrupt to purchase the planes leased to Raffa and True, neither I nor anyone on behalf of Citibank, to my knowledge, then knew or now knows whether the rentals to be paid under the Viequest, Raffa and True leases were substantially equivalent to the value of each of the aircrafts leased to those lessees, as alleged in paragraphs 7, 19 and 31 of the Trustee's statement.

9. Citibank did lend to the Bankrupt the amount of \$50,726.80 in connection with the Raffa lease and \$20,672 in connection with the Music Merchants personal property lease.

10. Citibank has filed a proof of secured debt in the bankruptcy proceedings of the Bankrupt on or about April 29, 1971 in the amount of \$1,239,898.89, representing the aggregate unpaid amounts owing from the Bankrupt to

*Affidavit of Louis Kollander of First National City  
Bank Sworn to June 12, 1973 in Opposition to  
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Citibank. While that amount has been reduced by collections since the date of the filing of the proof of claim, the present amount of the indebtedness owing from the Bankrupt to Citibank for all advances made under the loan and security agreement exceeds approximately \$920,000 at this time.

LOUIS A. KOLLANDER

Sworn to before me this

12th day of June, 1973

ROSE F. CORRAO  
Notary Public, State of New York  
No. 24-5823685  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1974

SEAL

EXHIBIT "1"--LOAN AND SECURITY AGREEMENT BETWEEN FIRST  
NATIONAL CITY BANK AND LCI ANNEXED TO  
AFFIDAVIT OF LOUIS KOLLANDER

LOAN AND SECURITY AGREEMENT

between

FIRST NATIONAL CITY BANK

and

LEASING CONSULTANTS, INCORPORATED

Exhibit "1" Annexed to Affidavit of Louis Kollander

14/15, 1969

First National City Bank  
Greenpoint Branch  
Manhattan Ave. & Noble Street  
Brooklyn, New York

Re: Loan and Security Agreement

Gentlemen:

We are engaged in the business of purchasing equipment and leasing it to our customers. The leasing of this equipment is covered by lease(s) whereby the undersigned is known as the "Lessor" and our customer(s) as the "Lessee(s)". Under such lease(s), copies of which will be used in each instance are attached hereto and made a part hereof, and when duly executed in this form and content, delivered and in full force and effect being hereinafter referred to singly as "Lease" and collectively as "Leases", Lessee agrees to make periodic rental payments.

To assist in financing our aforesaid business, we propose to apply to you from time to time for loans to be secured, and upon such terms, as are hereinafter set forth. In order to induce you to make such loans, at your sole discretion with respect to each, we hereby AGREE, COVENANT, REPRESENT AND WARRANT as follows:

I. CHECKING ACCOUNT: We will at all times while we may be indebted to you hereunder or relative hereto, maintain a Checking Account with you at your Greenpoint Branch. You may, without demand and acting in your discretion in each instance, (a) charge the Checking Account and/or any credit balance which we may then have with you relative thereto or otherwise with any amount(s) which may become due from us and payable to you under and pursuant to this Agreement, the amount so charged in each instance to be applied on account of the amount(s) then so due and payable, and (b) credit the Checking Account with the proceeds of any loan(s) which may be made by you to us hereunder, and any and all other amounts which may become

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

payable by us to you relative thereto -- we to be advised with reasonable promptness as to each charge and credit.

II. DELIVERY OF LEASES: From time to time we shall deliver to you:

A. The LEASES, in form and content attached, then being offered to you as collateral and ASSIGNMENTS of a continuing security interest in the Lease(s) and the property leased, in form attached hereto, duly executed in conformity with the provisions of the corporate resolution, a copy of which is attached hereto, authorizing the execution and delivery of this Letter-Agreement, the borrowing hereunder and the creation of such security interest(s) as collateral security for the payment of our Obligations to you incurred hereunder.

B. A SCHEDULE, in form satisfactory to you, of the Leases so assigned.

C. FINANCING STATEMENTS (UCC Forms) and such other forms and documents as may be necessary to perfect your and our security interests in the Lease(s) and the property leased are to be filed and recorded by us, at our expense, in such place or places so as to assure perfection of such security interest in your Bank and we will furnish to you original forms with the filing officer's acknowledgment of such filings thereon, together with an opinion of our counsel, at our expense, that such filings and recordings have perfected a security interest in your <sup>ABC</sup> FAVOR under the law or laws of the Federal Government and of the various States where, in the opinion of our counsel and your counsel, such filings are necessary and that the same have been complied with so as to perfect such security interests. These documents and filings and our attorneys' opinion shall have been received by you prior to any obligation on your part to advance any moneys to us as a loan upon any such Leases accepted by you subject to these provisions of prior perfection of security interests therein.

D. Any supplemental documentation, including, but not limited to, all guarantees, subordinations, landlord waivers, evidence of delivery of equipment by vendor(s) and (if applicable) title certificates, or other documents

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

interest created therein, the Schedule, together with the supplemental documents herein mentioned shall be deemed to have been so delivered and a security interest therein hereby created for your benefit as collateral security for the payment of any and all loans which you may make to us hereunder, as well as any and all other of our obligations or liabilities to you, which may now exist or hereafter arise (any and all such loans, obligations and liabilities being hereinafter referred to as the "OBLIGATIONS"), it being understood (i) that you will not by receiving any such Leases thereby assume any obligation or liability to any Lessee(s); (ii) that the leases will bear an original payment term not exceeding 60 months, or any other term which may be acceptable to you, commencing with the date thereof; (iii) that, whenever you may so request and at our cost and expense, we will execute and deliver to you such other and additional instruments as may be reasonably requisite, in the opinion of your counsel, to validate your security interest hereunder in and to the Lease(s) and in and to the equipment covered thereby as herein agreed to be created and assigned and to enable you to exercise and enforce your rights under this Agreement.

### III. REPRESENTATIONS, WARRANTIES AND COVENANTS:

#### A. We hereby represent and warrant as follows:

(a) We are a duly organized corporation existing and in good standing under the law of the State of New York and are qualified in each state in which the conduct of our business or the nature of our properties require such qualification;

(b) The making and performance of this Agreement are within our corporate powers, have been duly authorized by all necessary corporate action, and there is no law and no charter, by-law or preference share provision of ours, and no provision in any existing mortgage, indenture, contract or other agreement to which we are a party or by the terms of which we are bound, which would be contravened by the execution, delivery or performance by us of the terms of this Agreement, and no consent of the trustee or holder of any of our indebtedness is or will be required as a condition of the validity of this Agreement, or, if required, all such consents have been or will be duly obtained;

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

(c) This Agreement is a legal and binding obligation of ours, enforceable in accordance with its terms, and

(d) There are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect our financial condition or operations.

B. We hereby warrant with respect to each Lease that:

(a) Each Lease offered by us to you hereunder will represent a valid lease obligation of a bona fide Lessee having legal capacity to make the commitments represented thereby, to whom will have been delivered the goods described in the relevant Lease;

(b) Unless otherwise disclosed to you by us in writing at the time offered to you, the amount purporting to be owing under each such Lease will then be owing by the Lessee thereof without offset, counterclaim or other defense and will be payable over a period not exceeding 60 months, commencing with the date thereof;

(c) At the time any Lease is offered to you hereunder, the Lessee thereunder will not be in default with respect to any payment(s) which have become due and payable;

(d) Title to the equipment leased will, at the time of your acquisition of a security interest in the related Lease and equipment be vested in us free and clear of all liens and encumbrances whatsoever, except the interest of the Lessee under such document and your interest pursuant to the related security interest with respect thereto;

(e) All obligations to be performed by the manufacturer(s) and/or seller(s) under or in connection with any Leases conveyed to you as security hereunder will be duly and promptly fulfilled in accordance with the terms, covenants and conditions of such Leases;

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

(f) All requirements for filing or recording and refiling financing statements and continuation statements in respect of the relevant Lease will have been done at the time before any loan is made with respect to any Lease and shall be fully and duly complied with by us as heretofore provided herein; including perfection of security interest in aircraft leases and aircraft pursuant to 49 U.S.C.A. § 1403;

(g) We shall, by appropriate entry on our books of account, record all transactions with you hereunder; and

(h) While we are indebted to you hereunder, we will use our best efforts to pay each of our accounts payable promptly so as to obtain any and all discount(s) as may be allowed for prompt payment.

IV. NOTIFICATION OF LESSEES:

You may transmit to all or any of the persons, firms or corporations obligated on or under any Leases at any time(s) held by you hereunder such notice(s) of your interest in or under any such instruments as you may determine but you shall not be required to give any such notice(s) except in your sole and uncontrolled discretion, and any failure on your part to give any such notice(s) shall in no way affect your rights and interest thereunder or hereunder.

V. APPLICATION FOR LOANS:

Each application for a loan hereunder will be made in the form of a letter from us to you in such form as you may require.

VI. AMOUNT OF LOANS:

Whenever you may grant a loan hereunder, it is understood that the amount thereof will not exceed 80% of the aggregate amount of rental payments remaining to be paid under or on account of Leases then assigned to you hereunder and which are not Defaulted Leases as referred to in Section "VII" hereof. The aggregate principal amount of all loans at any one time outstanding hereunder shall be in such amount or amounts as you may from time to time determine. We hereby acknowledge ourselves indebted to you from time to time in the aggregate principal of loans outstanding at such time and promise to pay our indebtedness to you hereunder within 60 days after demand received by us for same.

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

## VII. DEFAULTED LEASE:

The full amount to be paid under each Lease which shall have been assigned to you hereunder shall be considered in default if: (1) any rental payment is more than 60 days past due, or (2) you have not received any rental payment either from the Lessee or from us within 60 days from the date due, or (3) the Lessee thereunder becomes involvent or bankrupt, or commits any act that might be construed as a declaration of insolvency or business failure, or (4) the Lease is terminated for any reason. Each such Lease so in default is hereinafter referred to as a "Defaulted Lease".

## VIII. AUTHORITY TO COLLECT AND ADJUST - INDEMNITY:

Until notice in writing of the revocation of our authority so to do shall have been received by us from you, and as additional consideration from us to you with respect to each loan which may be made by you to us hereunder, we shall, as your agent and at our sole cost and expense, endeavor to collect, or cause to be collected, in cash or its equivalent, from the Lessee, as and when due, any and all amounts owing under or on account of each Lease which may be assigned to you hereunder, and to hold IN TRUST for you each amount so collected.

We will indemnify and hold you harmless from and against any and all claims, demands, actions or suits which may be made or begun against you arising out of any matter or thing relating to the exercise of our agency powers hereunder.

## IX. REMITTANCES:

A. COLLECTIONS: We will REMIT to you, on the day of receipt by us and in the form received by us, all checks, money orders or other commercial items for the payment of money, whether or not endorsed by us, it being understood that each of such item shall be deemed to have been unqualifiedly endorsed by us, together with any cash, which we may collect and/or receive under or on account of the Leases then under assignment to you hereunder, and will then provide you with a remittance report (satisfactory in form to you) identifying the Leases on account of which each such remittance is made. In the event that a Lessee under any Lease then under assignment to you hereunder shall also be indebted to us on account

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

of any other obligation(s), any payment made by such Lessee and not specifically designated by such Lessee, in writing either to you or to us at or prior to the time when any such payment shall have been received by you or us, to be on account of any specific obligation(s) shall for the purposes hereof be deemed to be on account of that Lessee's obligation(s) under the Lease(s) then under assignment to you hereunder - and each such payment as may be received by you may, in the absence of prior receipt by you of notice to the effect that the payment is on account of some obligation(s) other than the Lease(s) then under assignment to you hereunder, be deemed by you to be solely on account of such Lease(s) and may be so applied. Upon receipt by you of the full amount owing to you by the Lessee under any Lease held by you hereunder, and all sums owing to you in respect thereof from us hereunder, you shall cancel your security interest therein and return the Lease to us.

**B. DEFAULTED LEASES:**

We will PAY AND REMIT to you forthwith upon demand an amount equal to that then remaining to be paid under or on account of each DEFAULTED LEASE, it being understood that you will thereupon reassign the Defaulted Lease (and your rights in any equipment covered thereby) to us without recourse upon or warranty by you. Furthermore, whenever any Lease then under assignment to you hereunder shall have become a Defaulted Lease for any cause other than non-payment of rentals when due, we will notify you thereof promptly in writing.

**X. CASH COLLATERAL ACCOUNT:**

It is understood that the amount of any and all cash or its equivalent which you may receive from any source(s) on account of any one or more Leases theretofore assigned and delivered to you hereunder will promptly be deposited in a Cash Collateral Account. Such funds will be charged to the Cash Collateral Account on the last day of each calendar month, or if that day is not in any instance(s) a day when you are open for business then on your next succeeding business day, with an amount equal to the balance to the credit of that

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

account as of the last business day immediately preceding the date of the charge. You may also, acting in your discretion, charge that account at any other time(s) and for any amount(s) due to you on account of any Obligation. It is understood that you will allocate and/or apply each amount so charged as follows:

(1) If we ARE NOT then in default under any Obligation and if you then deem the Obligation to be adequately secured, you may apply on account of any loan(s) then outstanding hereunder any portion of the amount charged which does not exceed 80% of the sum of the amount so charged, and you shall thereupon credit the balance of the amount so charged to our Checking Account under advice to us, or

(2) If we ARE then in default under any Obligation, or if then the Obligation is inadequately secured by un-defaulted Leases the aggregate rent of which is less than the amount of the then Obligation, or if you shall have demanded payment of the loans hereunder pursuant to the terms of Section "VI" hereof, or if a notice of termination shall have been given as is provided in Section "XVIII" hereof, you may withhold all or any portion of the amount so charged and apply the same on account of any principal and/or interest (as you may elect) then owing by us on any Obligation, crediting forthwith any excess after payment in full of all Obligations, to our aforesaid Checking Account under advice.

It is understood that in applying any amount(s) to any loan(s) hereunder, application will be made in the order in which the loan(s) was/were made.

XI. PAYMENTS: We will pay to you:

A. INTEREST: Not later than the 10th day of each calendar month, interest at the rate of 2% per annum in excess of your rate in effect from time to time for prime commercial loans of 90 day maturities and we hereby authorize you to debit our Checking Account on the 10th day of each such calendar month with the interest then due to you on the Obligations with the understanding that we will pay any deficiency upon demand. Any change in the interest rate for prime commercial loans shall take effect on the first day of the month following such change in said prime rate (computed on a 360 day year basis), or such other rate(s) as may be mutually agreed upon in writing between us, upon the

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

daily unpaid balances of all loan(s) made to us hereunder, to the extent that the same shall have been outstanding and unpaid at any time(s) during the calendar month immediately prior thereto, and for such number of days (with respect to each constituent part thereof) as the same shall have been outstanding and unpaid during such month.

**B. ADDITIONAL PAYMENTS TO BANK:**

On demand, the amount of any and all reasonable out-of-pocket expense which you may incur in connection with: (1) the collection of any checks, or other commercial items for the payment of money, which may be received by you relative to any Leases at any time(s) held by you hereunder; (2) the exercise by you of all or any of the power conferred upon you by this Agreement, and (3) each and every matter or thing which but for a default on our part under this Agreement would not need to have been incurred by you.

**C. BREACH OF WARRANTIES:**

In event of the breach of any of the warranties set forth herein with respect to any Lease, or of the assertion by any Lessee under any Lease theretofore assigned and delivered to you hereunder of any offset, counterclaim or other defense thereto, you are authorized to charge the Checking Account or we will at any time thereafter upon your demand, pay you an amount equal to 80% of the aggregate amount of rental payments then remaining to be paid under or on account of such Lease then held by you hereunder, it being understood that upon such payment you will cancel the security interest of the relevant Lease and return the same to us without recourse upon warranty by you.

**D. PREPAYMENT.**

Anything herein to the contrary notwithstanding, we shall have the right (i) at any time and from time to time, upon not less than five (5) days prior written notice to you, (ii) without notice to you but not later than the 10th day of any calendar month to prepay, without penalty or premium but with accrued interest to the date of prepayment, any or all of our outstanding loans hereunder.

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

## XII. MONTHLY STATEMENT:

That, on or before the 3rd business day of each calendar month, you will mail to us a statement setting forth: (a) all debits and credits made during the immediately preceding calendar month in connection with loans made to us hereunder and the outstanding daily balances thereof, and (b) a statement of the interest charges against the Checking Account and any deficiency which we are required to pay.

## XIII. POWERS CONFERRED UPON BANK:

We hereby irrevocably appoint you, and each of your officers and agents, our true and lawful agent and attorney (with full power in you to substitute one or more persons with like powers as such agent and attorney), in our name or otherwise, for your sole use and benefit, but at our sole cost and expense, to exercise at any time(s) all or any of the following powers with respect to all or any of the leases at any time(s) in which you have a security interest herein: (a) to demand, sue for, collect, receive and give acquittance for, any and all moneys due or to become due on account thereof; (b) to receive, take, endorse, assign and deliver any and all checks, notes, drafts and other negotiable or non-negotiable instruments taken or received by you in connection therewith; (c) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto; (d) to sell, transfer, assign or otherwise deal in or with the same, or the proceeds or avails thereof or the equipment covered thereby, as fully and effectually as if you were the absolute owner thereof; (e) to extend the time of payment of any or all thereof and to make any allowances or other adjustment with reference thereto; and (f) to file financing statements and amendments thereto with respect to the Leases or the equipment covered thereby without our signature where permitted by law, it being understood that the exercise by you at any time of any such authority shall in no way or in any manner whatsoever affect our liability to you hereunder. While you may take any action which you are empowered by this Agreement to take or which you may deem appropriate in enforcing collection of payment of all or any of the Leases, you shall be under no duty or obligation to do so. Furthermore, you shall in any event be without liability for any act, or failure to act, in connection with the collection of, or the preservation of, any rights under any one or more of the Leases.

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

## XIV. INSURANCE AND INDEMNITY:

We or the Lessee(s) will carry insurance, satisfactory to you and without cost and expense to you, on the equipment covered by the Leases assigned and delivered to you hereunder and we will (a) furnish you from time to time with certificates and/or duplicate policies thereof, and (b) cause the same to be payable in event of loss to you and/or ourselves as our respective interests may appear. In event of any claim(s) arising under said insurance, we will give you prompt notice in writing thereof and will promptly file proof of loss with the insurer(s). In event of payment being received by us from the insurer(s) under such policies, we will immediately transmit such payment to you to the extent of your interest at the time in the equipment in respect of which such payment is received. Furthermore, we will indemnify and hold you harmless from and against any and all claims, demands, actions or suits which may be made or begun by any third party(ies) and which concern any matter or thing as to which you might or could have any liability by reason of your being a party to this Agreement.

## XV. AUDITS AND FINANCIAL STATEMENTS:

While this Agreement is in effect, we will keep such books of account and other records as will enable you, or your designee(s), to determine therefrom at any time(s) the status of each Lease in which you shall have a security interest hereunder, and we will permit you, or your designee(s), at any time(s) to inspect, audit, check and make abstracts from our books, accounts, records, correspondence or other papers of any matters pertaining to all or any part of our business, and, upon request from you, we will deliver to you, at our sole cost and expense, such of the aforesaid records pertaining thereto as you may deem essential to enable you to enforce your rights under any such Lease or under this Agreement. We will also furnish you with a quarterly financial statement and operating figures, together with such other data as you may request; also, with our annual financial statement certified by accountants satisfactory to you.

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

XVI. DEFAULT -ACCELERATION OF MATURITY OF LOANS - SALE OF SECURITY:

If any one or more of the following events shall occur, that is to say: :

A. If default shall be made by us in the payment when due of any of our Obligations to you; or

B. If default shall be made by us in the due observance or performance of any of the promises, covenants, warranties and/or other terms and provisions hereof; or

C. If we shall (a) become insolvent or be unable to pay our debts as they mature, or (b) admit in writing our inability to pay our debts as they mature, or (c) make a general assignment for the benefit of creditors or to an agent (authorized to liquidate any substantial amount of our property or assets), or (d) become or be adjudicated a bankrupt or voluntarily file a petition in bankruptcy or for reorganization or to effect a plan or other arrangement with creditors, or (e) file an answer to a creditor's petition or other petition filed against us (admitting the material allegations thereof) for an adjudication in bankruptcy or for a reorganization or to effect a plan or other arrangement with creditors, or (f) apply for the appointment of a receiver or trustee for any substantial portion of our property or assets, or (g) if a receiver or trustee shall have been appointed for any substantial portion of our property or assets, or (h) if a writ or warrant of attachment or any similar process shall be issued against any substantial portion of our property and such writ or warrant of attachment or any similar process shall not have been released or bonded within 60 days after its entry or levy - then, and in any such event, such amount(s) as may then be owing by us to you hereunder or on account of any Obligation shall, at your option and upon your declaration, become and be immediately due and payable, in whole or in part. In addition, upon any such declaration accelerating the maturity of all or any of the Obligations, you shall have and be entitled to exercise in respect of the Leases assigned to you hereunder all the rights and remedies available to a secured party upon default under the Uniform Commercial Code (the "Code") in effect at the time in New York or elsewhere and may, without demand or notice to us and in your sole discretion, sell at any broker's board or at public or

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

private sale in the Borough of Manhattan, City of New York, or elsewhere, in one or more lots or parcels, at such price(s) as you may determine, for cash or on credit or for future delivery, all or any of your interest in the Leases then held by you hereunder and/or the equipment covered thereby, except that no private sale shall be effected without at least 5 days' notice in writing to us. You may be the purchaser of any or all of the property, rights and/or interest so sold and thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption on our part, any such demand, notice, right or equity being hereby expressly waived. After deducting all costs and expenses of every kind, you may apply the residue of the proceeds of any such sale(s) to the payment or reduction, either in whole or in part, of the principal and/or interest (as you may elect) then owing to you by us on account of any one or more of the Obligations, whether or not then due, and you shall return any overplus to us, all without prejudice to your rights against us with respect to any and all amounts which may then remain unpaid. For purposes of the Code, we agree that written notice of sale of, or your election to retain, any collateral in satisfaction of any of our Obligations mailed to us at our address specified in Section "XXI" hereof by first class mail, postage prepaid, three (3) business days prior to such sale or election shall be deemed reasonable notification thereof and that collateral which is sold in conformity with the reasonable practices of commercial banks in disposing of similar property shall be deemed sold in a commercially reasonable manner. We further agree that, upon any such declaration and if the Leases or other collateral are not then in your possession, we will assemble the collateral and make it available to you at our office specified in Section "XXI" hereof.

## XVII. WAIVER:

Promptness in making any demand by you upon us hereunder is hereby waived, and no delay by you in exercising or enforcing any of your rights hereunder shall be deemed to have constituted a waiver thereof.

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

## XVIII. TERMINATION:

Either of us may at any time present or mail a notice in writing to the other of us designating a day on and after which no further applications will be made by us to you for loans hereunder - without prejudice, however, as to your rights with respect to our then existing Obligations and Leases then held by you hereunder, it being understood that as and when all such amounts shall have been paid and satisfied, you will release the security interest in any and all Leases then held by you hereunder, whereupon this Agreement shall terminate.

## XIX. SUCCESSORS AND ASSIGNS:

The covenants, representations, warranties and agreements herein set forth shall be binding upon ourselves, our legal representatives, successors and assigns, and shall inure to your benefit and to that of your successors and assigns, and any such successor or assignee of yours shall have the same powers and rights with respect to the Leases, and otherwise with respect to this Agreement, as you might or could have hereunder.

## XX. INTERPRETATION-AMENDMENT:

This Agreement shall be deemed to have been made as of its date and shall be governed in all respects by the laws of the State of New York, including (without limitation) matters of validity, construction and performance, and none of its terms or provisions may be waived, altered, modified or amended except as we may mutually consent thereto in writing duly signed for and on our respective behalves.

## XXI. ADDRESS:

Each demand, notice or other communication which you may have occasion to make, give or transmit to us hereunder or relative hereto may be addressed to us at:

95-20 63rd Road  
Forest Hills, New York 11374

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

## XXII. ADDITIONAL CLAUSES:

A. If the balance at any time in the Checking Account established pursuant to Section I hereof and the cash collateral account established pursuant to Section X hereof are insufficient to pay the obligations to you as the same mature, we will pay the difference in cash upon demand, and if after the application of the moneys on account of the obligation authorized pursuant to Section X (2) there are still insufficient funds in the Account to pay the obligation then due, or if the obligation is inadequately secured, we will, upon demand, pay you sufficient funds to cure such default under the obligation and we will, at your election, either pay you additional funds in cash to adequately secure the obligation as provided in this Loan and Security Agreement or supply additional collateral acceptable to you to adequately secure the same.

B. Any lease or other instrument executed for security purposes, which lease or other instrument affects the title to or any interest in any aircraft engines, propellers or appliances maintained by or on behalf of an air-carrier certified under §1424 (b) of Title 49 U.S.C.A. will not be offered as collateral security for any loan hereunder.

C. The collateral described herein shall secure payment of all indebtedness, principal and interest, created under this Loan and Security Agreement as well as all future advances which may be made by you to us under this Loan and Security Agreement and any and all other liabilities of us to you of whatsoever kind or nature, due or to become due, now existing or hereafter created, or created under this Loan and Security Agreement or otherwise.

D. We will perform all of the covenants and provisions of the leases which we are obligated to perform hereunder and shall demand that the Lessees perform their obligations thereunder and in the event that the Lessees fail to perform said obligations, we will perform the same so that the leased property is maintained in good repair and necessary insurance is in effect as provided in said leases and that all of the provisions thereof are performed according to the terms thereof.

*Exhibit "1" Annexed to Affidavit of Louis Kollander*

E. We will pay promptly when due all taxes and assessments upon the collateral or for its use or upon this Agreement evidencing the obligation hereunder or the debts incurred hereunder, if any.

F. No option to purchase the equipment under any Lease shall be effective until the termination of the Lease and full payment of the rent and performance of all obligations thereunder and the Lessees shall have made all payments due under the subject lease and there is no default in the compliance with any of the terms thereof.

G. We will pay all the expenses of the transaction, including counsel fees for drawing the instruments in connection with this Agreement.

If the foregoing is agreeable to you, as it is to us, kindly so indicate by signing the attached copy and return it to us, whereupon, and without further notice from either of us to the other, the Agreement as herein set forth shall become effective as and from its date.

Very truly yours,

LEASING CONSULTANTS, INC.

By 

President

AGREEABLE:

FIRST NATIONAL CITY BANK

By 

Vice President

**EXHIBIT "2"--FINANCING STATEMENTS ANNEXED TO  
AFFIDAVIT OF LOUIS KOLLANDER**

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.		No. of Additional Sheets Presented:	Maturity Date 3. (optional):
1. Debtor(s) (Last Name First) and Address(es): <b>LEASING CONSULTANTS, INCORPORATED 9520 63rd Road Forest Hills, New York</b>	2. Secured Party(ies) Name(s) and Address(es): <b>FIRST NATIONAL CITY BANK Montague Street Regional Center 181 Montague Street Brooklyn, New York</b>	4. For Filing Office Use Only: (Date, Time, Filing Office) <b>69P 51709 DEC 30 AM 9:03</b>	

5. This Financing Statement covers the following types (or items) of property: Continuing security interest in leases and any and all rents due and to become due thereunder, including all related equipment described therein, chattel paper represented thereby, accounts receivable there-with and proceeds arising therefrom.		6. Assignee(s) of Secured Party and Address(es):
<input checked="" type="checkbox"/> Proceeds — <input checked="" type="checkbox"/> Products of the Collateral are also covered. 8. Describe Real Estate Here:		7. <input type="checkbox"/> The described crops are growing or to be grown on it. <input type="checkbox"/> The described goods are or are to be affixed to it. a (Describe Real Estate Below).
9. Name(s) of Record Owner(s):		
No. & Street	Town or City	County
		Section Block Lot

10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check appropriate box)

- ☐ under a security agreement signed by debtor authorizing secured party to file this statement, or  
☐ already subject to a security interest in another jurisdiction when it was brought into this state, or  
☐ which is proceeds of the original collateral described above in which a security interest was perfected

**LEASING CONSULTANTS, INCORPORATED**

**FIRST NATIONAL CITY BANK**

*First Hills, Inc.*  
Signature(s) of Debtor(s)

By *[Signature]*  
Signature(s) of Secured Party(ies)

(1) Filing Officer Copy — Numerical

9/85 STANDARD FORM NEW YORK STATE FORM UCC-1 — Approved by John P. Lomenzo, Secretary of State of New York

## Exhibit "2" Annexed to Affidavit of Louis Kollander

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.		No. of Additional Sheets Presented:	Maturity Date 3. (optional):
1. Debtor(s) (Last Name First) and Address(es): <b>LEASING COMPANY, INCORPORATED 95-20 63rd Road Forest Hills, New York</b>	2. Secured Party(ies): Name(s) and Address(es): <b>NEW YORK STATE Montague St. Regional Center 181 Montague Street Brooklyn, New York</b>	4. For Filing Officer: Date, Time, No. Filing Office  2.00 9.00 AM DEC 31 '59 185,440	
5. This Financing Statement covers the following types (or items) of property: <b>Continuing security interest in leasehold and all rents due and to become due thereunder, including all related equipment described therein, chattel paper represented thereby, accounts receivable thereof and proceeds therefrom.</b>		6. Assignee(s) of Secured Party and Address(es):	
<input type="checkbox"/> Proceeds — <input checked="" type="checkbox"/> Products of the Collateral are also covered.		7. <input type="checkbox"/> The described crops are growing or to be grown on: * <input type="checkbox"/> The described goods are or are to be offed to: * * (Describe Real Estate Below).	
8. Describe Real Estate Here:		9. Name(s) of Record Owner(s):	
No. & Street	Town or City	County	Section Block Lot

EXHIBIT "3"--ASSIGNMENT OF LEASES FROM LCI TO FIRST  
NATIONAL CITY BANK DATED JULY 24, 1970  
ANNEXED TO AFFIDAVIT OF LOUIS KOLLANDER

ASSIGNMENT OF LEASES

KNOW ALL MEN that the undersigned, for value received, hereby sells, assigns, transfers and sets over to FIRST NATIONAL CITY BANK (herein called the "Bank"), all of the rights, title and interest of the undersigned in, to and under: (a) each and all of the LEASES designated in the schedule, which appears on the reverse side hereof, and all moneys due, or that may become due, thereon or thereunder; (b) the relative equipment as more fully described in the leases annexed hereto, as security for any and all obligations of the undersigned to the Bank under and pursuant to the Loan and Security Agreement hereinafter described; and (c) any and all guaranties, subordinations and other documents pertaining to said Leases and/or relative equipment.

This assignment is made under and pursuant to that certain Loan and Security Agreement entered into by and between the Bank and the undersigned, dated.....December 15....., 19.69... and any amendment(s) thereof.

WITNESS, the signature of the undersigned this 24..... day of July....., 19.70..

LEASING CONSULTANTS INCORPORATED  
.....  
By.....  
(Title) EVP

SCHEDULE OF LEASES  
OFFERED TO  
FIRST NATIONAL CITY BANK  
Time Contracts Section

By Leasing Consultants Incorporated

On July 24, 1970

**DELIVER TO BANK IN DUPLICATE.** Copy will be returned as a Credit Advice.

[illegible]

FOR BANK USE ONLY

By \_\_\_\_\_ Checked \_\_\_\_\_

Prepared

Posted

JUL 30 1970

**Total Rental Payments To Be Made**

**Less: Excluded Rental Payments**

### Acceptable Rental Payments

**Today We Credited Your Regular Account At Our**

Greenpoint Branch with 80 %  
of Acceptable Rental Payments

\$ 39,726.00

\$ 3,972.60

\$ 35,753.40

~~\$97-602-79~~

**FIRST NATIONAL CITY BANK**

Date JUL 30 1970

By P. J. Marshall  
Assistant Cashier

Exhibit "3" Answered to Affidavit of Louis Kollander

A 78

DEFENDANT'S STATEMENT PURSUANT TO LOCAL GENERAL RULE 9(g)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

Plaintiff,

-against-

FIRST NATIONAL CITY BANK,

Defendant.  
-----X

73 Civ. 1722

DEFENDANT'S STATEMENT  
PURSUANT TO RULE 9(g)  
OF THE GENERAL RULES  
OF THIS COURT

The following is defendant's statement of the relevant and material facts which remain to be tried:

1. Whether the rentals to be paid under each of the three airplane leases referred to in the First, Second and Third Causes of Action were substantially equivalent to the value of the leased aircraft;

\* \* \* \* \*

Dated: New York, New York  
June 14, 1973

ZALKIN & COHEN

By: HENRY LEWIS GOODMAN  
A Member of the Firm  
Attorneys for Defendant  
750 Third Avenue  
New York, New York 10017

OPINION OF JUDGE ARNOLD BAUMAN DATED JANUARY 8, 1974

copy

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

Plaintiff,

-against-

FIRST NATIONAL CITY BANK,

Defendant.  
-----x

#40193

73 Civ. 1722

JAN 3 11 23 PM '74

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A P P E A R A N C E S

Hahn, Hessen, Margolis & Ryan, New York City,  
(Daniel A. Zimmerman, of counsel) for plaintiff

Zalkin & Cohen, New York City, (Henry L. Goodman,  
of counsel) for defendant

BAUMAN, D. J.

These are actions by a trustee in bankruptcy brought under § 70 of the Bankruptcy Act, 11 U.S.C. § 110, to invalidate assignments of aircraft leases made by a bankrupt lessor to defendant bank and to declare defendant's interests in them subordinate to those of the plaintiff trustee. Plaintiff also seeks the proceeds from the sale of certain equipment in which defendant claims to have perfected a security interest.

Plaintiff moves for summary judgment pursuant to Rule 56 of the Civil Rules and for an order directing defendant to turn over all payments received under the leases subsequent to the filing of the petition in bankruptcy. Defendant moves to

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dismiss pursuant to Rule 12(b)(6) of the Civil Rules on the ground that the action is time barred.

## I.

On December 15, 1969, Leasing Consultants, Incorporated (hereinafter "LCI") and First National City Bank (hereinafter "FNCB") entered into a loan and security agreement, pursuant to which FNCB agreed to assist LCI in its business of purchasing and then leasing equipment to its customers by making loans to LCI. LCI agreed to assign and deliver the leases to FNCB and grant it a continuing security interest in the property leased. On December 30 and 31, 1969, FNCB filed UCC-1 financing statements against LCI with the Registrar of the City of New York, Queens County, and with the New York Secretary of State covering a "[c]ontinuing security interest in leases and any and all rents due and to become due thereunder, including all related equipment described therein, chattel paper represented thereby, accounts receivable therewith and proceeds arising therefrom."<sup>1/</sup>

LCI filed a petition for arrangement under Chapter XI of the Bankruptcy Act in the United States District Court for the Eastern District of New York on August 18, 1970, and was adjudicated a bankrupt on October 16, 1970.

## II.

## The Vieques Transaction

There is no dispute as to the following facts.

LCI and Vieques Air Link, Inc. (hereinafter "Vieques") executed a lease dated March 5, 1970 covering a Piper Cherokee

*Opinion*

airplane for which LCI had paid \$27,878. Under its terms Vieques undertook to make 60 monthly payments of \$662.10, aggregating \$39,726, and was granted an option to purchase the airplane upon the completion of the lease for \$1,393.90, which Vieques prepaid. LCI assigned the Vieques lease to FNCB in an instrument dated July 24, 1970. Neither the lease nor its assignment was recorded with the Federal Aviation Agency pursuant to 49 U.S.C. § 1403.

An issue of fact exists between the parties as to the number of payments received by FNCB under the Vieques lease.<sup>2/</sup>

*The Raffa Transaction*

On December 8, 1969, LCI and Raffa Van Atta, Ltd. (hereinafter "Raffa") executed a lease covering a 1963 Beechcraft airplane for which LCI had paid \$43,800. The lease required Raffa to make 60 monthly payments of \$1,093.25, for a total of \$65,595, upon completion of which Raffa was given an option to purchase for \$4,380, which sum Raffa prepaid upon execution of the lease. LCI assigned the Raffa lease to FNCB on December 29, 1969; neither the lease nor its assignment was recorded with the FAA.

The amount received by FNCB under the Raffa lease is at issue between the parties.<sup>3/</sup>

*The True Transaction*

On March 2, 1970, LCI leased a 1969 Piper Cherokee Arrow to James W. True. The airplane, for which LCI had paid \$24,070, was leased to True for five years at a monthly rental of \$571.66, totalling \$34,299.60. True was granted an option to purchase the

airplane upon completion of the term for \$2,407, of which he paid one-half, or \$1,203.50, upon execution. LCI assigned the True lease to FNCB on July 24, 1970, but neither the lease nor its assignment was recorded with the FAA.

The parties disagree as to the total amount received by FNCB under this lease.<sup>4/</sup>

This suit was commenced on April 18, 1973, two years and eight months after the Chapter XI petition was filed and two years and six months after LCI was adjudicated a bankrupt.

Apart from the disputes as to the amounts actually received by FNCB, the parties' disagreements focus upon the legal interpretation to be placed upon the undisputed facts I have set forth. FNCB argues that it perfected a security interest in the leases and proceeds under them through the UCC-1 statements filed in Queens County and with the New York Secretary of State since they were clearly encompassed by the language of the financing statement. The trustee argues that the UCC filing was ineffective to perfect such a security interest because FNCB failed to record the assignments with the Federal Aviation Agency. Consequently, he contends, FNCB's interest is subordinate to the rights of the trustee or invalid as against him. FNCB argues that, in any event, the trustee's action is time barred by Section 11e of the Bankruptcy Act, 11 U.S.C. § 29(e).

III.

By filing UCC-1 financing statements to cover LCI's leases and the rents due under them in Queens and with the Secretary

## Opinion

of State, FNCB clearly intended to perfect a security interest in the leases, treated as chattel paper by U.C.C. §§ 9-304 and 9-305. The relevant question is whether this filing was effective to that end.

As I have indicated in my opinion in Feldman v. Chase Manhattan Bank, \_\_\_\_\_ F.Supp. \_\_\_\_\_, 72 Civ. 1205, filed this day, the only way in which a security interest in assigned aircraft leases can be perfected by the assignee is by filing the assignments with the Federal Aviation Agency recordation system, pursuant to 49 U.S.C. § 1403.<sup>5/</sup> This FNCB did not do and it, therefore, is not, in my view, a secured creditor with respect to the LCI-Vieques,<sup>6/</sup> Raffa, and True leases.

FNCB also argues that the trustee's action is time barred by Section 11e of the Bankruptcy Act, 11 U.S.C. § 29.<sup>7/</sup> That section provides that a trustee may bring an action on any claim on behalf of the bankrupt's estate within two years from the date of adjudication unless a longer period is allowed by state or federal non-bankruptcy law. However where the trustee's claim arises under the Bankruptcy Act itself, as in the case of actions under Section 60, 11 U.S.C. § 96, to avoid a preference, the suit is governed exclusively by the two years prescribed by Section 11e. Herget v. Central National Bank & Trust Co., 324 U.S. 4 (1945). Hence, statutes of limitations of greater length than Section 11e are applicable only to those claims which originate outside the Bankruptcy Act.<sup>8/</sup>

<sup>9/</sup>  
The trustee's suit appears to have been brought under

Section 70c of the Bankruptcy Act, 11 U.S.C. § 110(c),<sup>10/</sup> which invests the trustee, as of the date of bankruptcy, with all the powers the state law would allow to a judgment creditor who had by the date of bankruptcy completed all necessary processes to perfect a lien in the property.<sup>11/</sup> Rights asserted under Section 70c depend upon non-bankruptcy law for their substantive content; thus Section 11e is inapplicable unless it allows the trustee more time than does the law of the jurisdiction creating the substantive rights. In Buchman v. American Foam Rubber Corp., 250 F.Supp. 60, 71 (S.D.N.Y. 1971), Section 70e of the Act, which permits the trustee to assert the rights of any actual creditor of the bankrupt as to whom a particular transfer is void, was held to be governed by the period of limitations for the state statute which created the creditor's right, and Section 11e was held inapplicable because it prescribed a lesser term. The reasoning of Buchman would seem applicable to actions such as this brought under Section 70c as well. The substantive right upon which the trustee sues is not created by the Bankruptcy Act; it only confers the authority to assert a lien creditor's right created elsewhere.

The determination of the statute of limitations applicable to the trustee's claim, then, must start at the source of the substantive rights asserted and end with a determination of whether its limitation period exceeds the two years of Section 11e. The attack on the validity of FNCB's purported security interest proceeds from 49 U.S.C. § 1403(c), which provides that no conveyance for which FAA recording is required shall be valid against

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those without actual notice of it. Section 1403, however, does not contain a statute of limitations, and so we must inquire into whether the applicable period of limitations is Section 11e of the Bankruptcy Act or whether it is "fixed" by Section 1403 within the meaning of Section 11e.

No authority exists for the proposition that a state or federal non-bankruptcy statute of limitations, in order to supplant the Section 11e period, must be a component of, or explicitly incorporated by, the statute which creates the cause of action.<sup>12/</sup> I suggest that to supplant the Section 11e period, a statute of limitations need only be applicable to the cause of action; it need not be an organic part of the statute in which the cause of action originates.<sup>13/</sup>

The preemption of otherwise applicable state law by Section 1403 of the Federal Aviation Act, as discussed in my opinion in Feldman v. Chase Manhattan Bank, 73 Civ. 1205, is considerably less than total. It has been established that such preemption goes only to the validity of purported security interest and does not determine the issue of the priority of security interests, see Northern Illinois Cor. v. Bishop Distributing Co., 284 F.Supp. 121 (W.D.Mich. 1968); Texas National Bank v. Aufderhei 235 F.Supp. 599 (E.D.Ark. 1964); nor validate security interests which are void under state law, see Aircraft Investment Corp. v. Pezzani & Reid Equipment Co., 205 F.Supp. 80, 82 (E.D. Mich. 1962) cf. State Securities Co. v. Aviation Enterprises, Inc., 355 F.2d 225, 229 (10th Cir. 1966).

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The question of the period of limitations applicable to trustees' actions under Section 1403 appears to be a novel one. It is clear, however, that Section 1403 determines only the validity of security interests; but like the issue of priority among competing security interests, the question of the period within which to sue is left to state law.

It is not contested that plaintiff trustee, the bankrupt and FNCR are all either residents of New York or have their principal offices located there. Therefore, the relevant New York statute of limitations would seem to be determinative, i.e., N.Y.C.P.L.R. §§ 201-18 (McKinney 1972), which sets forth different periods of limitations for different theories of action. Plaintiff's challenge to defendant's purported security interest under 49 U.S.C. § 1403(c) might conceivably fall into three different categories: an action for monies had and received, to set aside a conveyance of personality, or upon a constructive trust, C.P.L.R. § 213(i). All are governed by the residual six year statute contained in C.P.L.R. § 213(1). In that the trustee's suit was commenced April 18, 1973, two years and eight months after the petition in bankruptcy was filed and two years and six months after LCI was adjudicated a bankrupt, the matter becomes academic.

For the reasons stated above, defendant's motion to dismiss by reason of the time bar of Section 11e, 11 U.S.C. § 29(e), is denied. Summary judgment for the plaintiff is granted and, insofar as the parties contest the amount received by FNCR under each of the leases, the action is referred to a magistrate to hear and report on the issue of damages.

*Opinion*

## IV.

## The Music Merchants Lease

Again, the following facts are undisputed.

On January 24, 1969, LCI leased to Music Merchants of America, Inc. (hereinafter "Music Merchants") non-aviation equipment located in Phoenix, Arizona, for a term of 36 months. Pursuant to its agreement with FNCB of December 15, 1969 and the UCC financing statements subsequently filed in New York, LCI granted FNCB a security interest in the Music Merchants lease and equipment and assigned the lease to FNCB on June 17, 1970. However, the papers contain no allegation that FNCB took possession of the lease. No financing statement was filed in Arizona. At the completion of the lease term, FNCB sold the equipment to the lessee for \$8,550.

The trustee moves for summary judgment, alleging that FNCB failed to perfect its security interest and that consequently, its security interest is subordinate to the rights of the trustee, who claims to be entitled to the proceeds of the sale. The bank argues that an issue of fact exists as to whether the Music Merchants "lease" constituted a true lease or a conditional sales agreement.

## V.

Unlike the situations considered earlier in this opinion, the perfection of FNCB's security interest in the lease and equipment is governed by Article 9 of the Uniform Commercial Code. The distinction between a conditional sales agreement and a true lease thus becomes a crucial one. If the Music Merchants "lease"

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is a true lease, FNCB's failure to file a financing statement in Arizona, the location of the equipment, left it without a perfected security interest in LCI's reversionary interest, see U.C.C. § 9-105(f); 9-109(2); 9-102(1), because a security interest in "goods" (the reversionary interest in the equipment) may be perfected only by filing a financing statement in the state where they are located. See U.C.C. § 9-401(1)(6). On the other hand, if the Music Merchants "lease" was in reality a conditional sales agreement, Music Merchants owned the equipment and FNCB perfected its security interest by its filing in New York, see U.C.C. § 9-401(1)(c).

This litigation is on all fours with In the Matter of Leasing Consultants, Inc., No. 73-1152 (2nd Cir., Sept. 25, 1973) which involved the same bankrupt, trustee and bank, but a different lease. In that case the bank had filed a financing statement in New York to cover leased equipment located in New Jersey. The Second Circuit remanded for an evidentiary hearing as to whether the "lease" instruments were true leases or disguised security agreements, in view of the significance of that factor in determining the bank's security interest. (Slip Opinion at 10-11).

As in Leasing Consultants, the papers submitted on the motion for summary judgment do not enable me to make such a determination. Although the lease contains no purchase option, the bank may be able to show that one had been agreed upon by LCI and Music Merchants, even though it was not incorporated in the lease or that they had agreed at the time the lease was signed to leave

*Opinion*

the question for future negotiation, factors extrinsic to the lease as well as "the contents of the lease itself" may be considered by the court. Leasing Consultants, supra, slip opinion at 10, citing In re Walter W. Willis, Inc., 313 F.Supp. 1274, 1278 (N.D.Ohio 1970), aff'd, 440 F.2d 945 (6th Cir. 1971).

Therefore, plaintiff's motion for summary judgment is denied. An evidentiary hearing is ordered to aid in this determination.

Defendant's motion to dismiss the action as time-barred under Section 11e of the Bankruptcy Act is denied. The trustee's action is brought under Section 70, to which state statutes of limitations are applicable, see Part III supra.

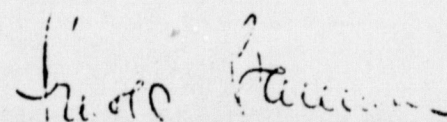
## VI.

Summary judgment is granted to the plaintiff-trustee in the Vieques, Raffa and True matters. Accordingly, the trustee is entitled to judgment in the amount of the payments made to FNCB after the petition in bankruptcy was filed on August 18, 1970, plus interest. The case is referred to a magistrate to hear and report as to the amount of such payments. Defendant's motion to dismiss is denied.

Summary judgment is denied as to the Music Merchants litigation and an evidentiary hearing, to resolve the issues noted above, is ordered. Defendant's motion to dismiss is denied.

It is so ordered.

Dated: January 8, 1974

  
\_\_\_\_\_  
U. S. D. J.

Footnotes

- 1/  
Exhibit 2 to affidavit of Louis A. Kollander, June 12, 1973.
- 2/  
The trustee submits that FNCB received, between May 1, 1973 and August 18, 1970, 32 payments of \$662.10, for a total of \$21,187.20. FNCB contends that it received 33 payments aggregating \$21,849.30.
- 3/  
The trustee maintains that FNCB received 32 payments of \$1,093.25 between August 18, 1970 and May 1, 1973, for a total of \$34,984. FNCB states that it received only 27 payments aggregating \$27,331.25.
- 4/  
The trustee states that the True lease was paid out on September 10, 1970 for \$24,226.93; FNCB contends it received only \$23,438.06 under the lease.
- 5/  
The relevant parts of Section 1403 are as follows:  

"§ 1403 — Recordation of aircraft ownership —  
Establishment of recording system  
(a) The Administrator shall establish and maintain a system for the recording of each and all of the following:  
(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;  
\* \* \*

Recording of releases, cancellations, discharges or satisfactions.  
(b) The Administrator shall also record under the system provided for in subsection (a) of this section any release, cancellation, discharge, or satisfaction relating to any conveyance or other instrument recorded under said system.  
Validity of conveyances or other instruments; filing  
(c) No conveyance or instrument the recording of which is provided for by subsection (a) of this section shall be valid in respect of such aircraft ... against any person other than the person by whom the conveyance or other instrument is made or given, his heir or devisee, or any person having actual notice thereof, until such conveyance or other instrument is filed for recordation in the office of the Administrator ....  
Effect of recording  
(d) Each conveyance or other instrument recorded

*Opinion*

by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation....

Form of conveyance or other instruments  
(e) No conveyance or other instrument shall be recorded unless it shall have been acknowledged before a notary public or other officer authorized by the law of the United States, or of a State, Territory, or possession thereof, or the District of Columbia, to take acknowledgment of deeds.

Index of conveyances and other instruments  
(f) The Administrator shall keep a record of the time and date of the filing of conveyances and other instruments with him and of the time and date of recordation thereof. He shall record conveyances and other instruments filed with him in the order of their reception, in files to be kept for that purpose, and indexed according to—

(1) the identifying description of the aircraft, aircraft engine, or propeller, or in the case of an instrument referred to in subsection (a) (3) of this section, the location or locations specified therein, and

(2) the names of the parties to the conveyance or other instrument.

## Regulations

(g) The Administrator is authorized to provide by regulation for the endorsement upon certificates of registration, or aircraft certificates, of information with respect to the ownership of the aircraft for which each certificate is issued, the recording of discharges and satisfactions of recorded instruments, and other transactions affecting title to or interest in aircraft, aircraft engines, propellers, appliances, or parts, and for such other records, proceedings, and details as may be necessary to facilitate the determination of the rights of parties dealing with civil aircraft of the United States, aircraft engines, propellers, appliances, or parts."

6/

This opinion does not purport to consider whether § 1403 is a trap for the unwary, a snare in the would-be creditor's hunt for perfection of his security interest. It may be that the filing practices of large secured creditors have been established without regard to the breadth of the concluding words of § 1403(a)(1), "affects the title to, or any interest in, any civil aircraft...."

7/

"(e) A receiver or trustee may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings in behalf of the estate upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for presenting or filing any claim, proof of claim, proof of loss, demand, notice, or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in such proceeding or by applicable Federal or State law, for taking any action, filing any claim or pleading, or doing any act, and where in any such case such period had not expired at the date of the filing of the petition in bankruptcy, the receiver or trustee of the bankrupt may, for the benefit of the estate, take any such action or do any such act, required or permitted to the bankrupt, within a period of sixty days subsequent to the date of adjudication or within such further period as may be permitted by the agreement, or in the proceeding or by applicable Federal or State law, as the case may be."

11 U.S.C. § 29(e).

8/

See 1 Collier, Bankruptcy Manual § 11.67 (2d ed. 1972).

9/

The trustee's papers also refer in passing to § 70e, 11 U.S.C. § 110(e), which permits the trustee to assert the rights of any actual creditor of the bankrupt as to whom the challenged transfer is void.

10/

"(c) The trustee may have the benefit of all defenses available to the bankrupt as against third persons, including statutes of limitation, statutes of frauds, usury, and other personal defenses; and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee, as to all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, whether or not such a creditor actually exists."

11 U.S.C. § 110(c).

*Opinion*

11/

See 1A Collier, Bankruptcy Manual § 70.30.

12/

See, e.g., 1 Collier, Bankruptcy Manual § 11.07 (2d ed. 1972), which refers only to the "applicable" state or federal non-bankruptcy period of limitations.

13/

The rule enunciated in Holmberg v. Armbrecht, 327 U.S. 392 (1946), that state statutes of limitations are inapplicable to actions in federal court to enforce federally-created equitable rights, does not govern suits brought under § 70 because the rights sued upon are state, not federal creations. See Buchman v. American Foam Rubber Corp., supra, 250 F.Supp. at 71.

REPORT OF MAGISTRATE SCHREIBER DATED MAY 29, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consul-  
tants Incorporated, Bankrupt,

73 Civ. 1722  
(Bauman, J.)

Plaintiff,

-against-

FIRST NATIONAL CITY BANK,

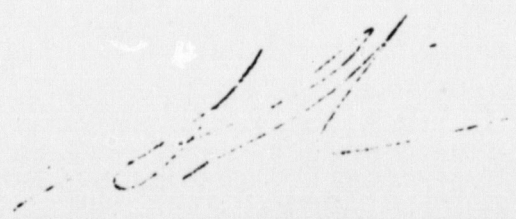
Defendant.  
-----v

Magistrate's Report

The above case having been referred to the undersigned to hear and report on the amount of damages by the memorandum decision and order of the Honorable Arnold Bauman, District Judge, dated January 8, 1974;

The undersigned does hereby submit the annexed stipulation of counsel for the parties as his report.

New York, New York  
May 29, 1974

  
\_\_\_\_\_  
Sol Schreiber, Magistrate

STIPULATION OF ATTORNEYS ANNEXED TO REPORT OF  
MAGISTRATE SCHREIBER

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consul-  
tants Incorporated, Bankrupt,

73 Civ. 1722  
(Bauman, J.)

Plaintiff,

-against-

FIRST NATIONAL CITY BANK,

Defendant.  
-----x

Stipulation

This action having come on for hearing before the Court, Honorable Arnold Bauman, District Judge, presiding, and said judge, by memorandum opinion dated January 8, 1974, having granted summary judgment to the plaintiff trustee on the first three causes of action "in the amount of the payments made to [defendant] after the petition in bankruptcy was filed on August 18, 1970 plus interest" and the case having been referred to Magistrate Sol Schreiber to hear and report as to the amount of such payments; and the attorneys for plaintiff and defendant having agreed to the amount of said payments.

*Stipulation of Attorneys Annexed to Report of  
Magistrate Schreiber*

Now, it is therefore stipulated and agreed, by and  
between the attorneys for the parties that:

(1) Plaintiff have judgment against defendant on his  
first cause of action in the principal sum of \$35,735.50 with  
interest thereon in the sum of \$3,756.43 through May 9, 1974,  
and additional daily interest at the rate of \$5.87 per day  
thereafter.

(2) Plaintiff have judgment against defendant on his  
second cause of action in the principal sum of \$27,273.02 with  
interest thereon in the sum of \$5,541.01 through May 9, 1974,  
with additional daily interest at the rate of \$4.48 per day  
thereafter.

(3) Plaintiff have judgment against defendant on his third  
cause of action in the principal sum of \$25,150.91 with interest  
thereon through May 9, 1974 in the sum of \$6,201.10 with addi-  
tional dail interest at the rate of \$4.13 per day thereafter.

(4) In regard to plaintiff's second cause of action, any  
claims against Raffa Van Atta Ltd., as lessee, or against John  
Raffa as guarantor of a certain lease dated December 8, 1969  
between Leasing Consultants Incorporated as lessor and Raffa  
Van Atta Ltd. as lessee, or any judgment or judgments into which  
such claims may have merged, together with title to and/or a se-

*Stipulation of Attorneys Annexed to Report of  
Magistrate Schreiber*

curity interest in a Beechcraft airplane registration number  
N558SB are the property of plaintiff and not defendant.

New York, New York  
May 1, 1974

HAHN, HESSEN, MARGOLIS & RYAN  
Attorneys for Plaintiff

By: \_\_\_\_\_

ZALKIN, RODIN & GOODMAN  
Attorneys for Defendant

By: \_\_\_\_\_

ORDER AND JUDGMENT OF JUDGE BAUMAN DATED JUNE 4, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consul-  
tants Incorporated, Bankrupt,

Plaintiff,

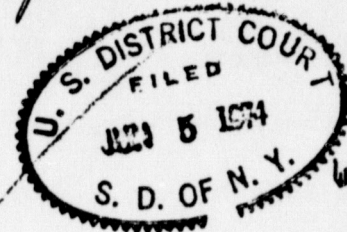
-against-

FIRST NATIONAL CITY BANK,

Defendant.

73 Civ. 1722  
(Bauman, J.)

*Judgt. # 74,479*



*WJK*

Order &

*Judgment*

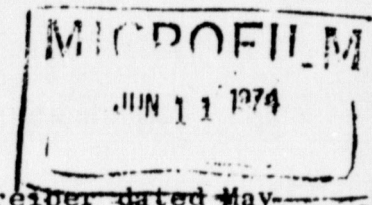


Upon the memorandum decision of this court dated January 8, 1974; and the report of Magistrate Sol Schreiber, dated May 29, 1974, adopting a stipulation of the attorneys for the parties as to the amount of damages, it is

ORDERED, ADJUDGED AND DECREED:

1. The report of Magistrate Sol Schreiber dated May 29, 1974 is approved and accepted.

2. Plaintiff have judgment against defendant on his first cause of action in the principal sum of \$35,073.40, with interest thereon through May 9, 1974 in the sum of



*Order and Judgment of Judge Bauman Dated June 4, 1974*

\$3,756.43, plus interest on the principal sum at a rate of \$5.85 per day from May 10, 1974 until the date judgment is entered.

3. Plaintiff have judgment against defendant on his second cause of action in the principal sum of \$18,527.02 with interest thereon through May 9, 1974 in the sum of \$3,193.48, plus interest on the principal sum at a rate of \$3.09 per day from May 10, 1974 until the date judgment is entered.

4. In regard to plaintiff's second cause of action, any claims against Raffa Van Atta Ltd., as lessee, or against John Raffa as guarantor of a certain lease dated December 8, 1969 between Leasing Consultants Incorporated as lessor and Raffa Van Atta Ltd. as lessee, or any judgment or judgments into which such claims may have merged, together with title to and/or a security interest in a Beechcraft airplane registration number N558SB are the property of plaintiff and not defendant.

5. Plaintiff have judgment against defendant from his third cause of action in the principal sum of \$25,150.91, with interest thereon through May 9, 1974 in the amount of \$3,193.48, ✓

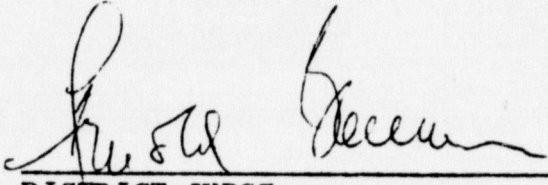
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Order and Judgment of Judge Bauman Dated June 4, 1974

plus interest on the principal sum at the rate of \$4.13 per day  
from May 10, 1974 until the date judgment is entered.

6. Let judgment be entered.

New York, New York  
June 4, 1974

  
DISTRICT JUDGE

JUDGMENT ENTERED - 6/11/74  
Raymond F. Berghardt

DEFENDANT'S NOTICE OF APPEAL DATED JUNE 14, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

GEORGE FELDMAN, as Trustee in  
Bankruptcy of Leasing Consultants  
Incorporated, Bankrupt,

73 Civ. 1722

(Bauman, J.)

Plaintiff,

-against-

NOTICE OF APPEAL

FIRST NATIONAL CITY BANK,

Defendant.

-----X

S I R S :

NOTICE IS HEREBY GIVEN that the defendant, FIRST NATIONAL CITY BANK, hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the order and judgment, said order having been entered in this action on June 5, 1974 and said judgment having been entered in this action on June 11, 1974, which granted the plaintiff judgment against the defendant on the first, second and third causes of action of the complaint.

Dated: June 14, 1974

ZALKIN, RODIN & GOODMAN

By: HENRY LEWIS GOODMAN

A Member of the Firm

Attorneys for Defendant  
FIRST NATIONAL CITY BANK  
750 Third Avenue  
New York, N.Y. 10017  
(212) 682-6900

*Defendant's Notice of Appeal Dated June 14, 1974*

TO:

HAHN, HESSEN, MARGOLIS & RYAN  
Attorneys for Plaintiff  
350 Fifth Avenue  
New York, New York 10001

CLERK OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

STIPULATION AND ORDER AMENDING AND CORRECTING NUNC PRO  
TUNC FIFTH DECETAL PARAGRAPH OF AFORESAID ORDER AND  
 JUDGMENT DATED JUNE 4, 1974

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

-----x

GEORGE FELDMAN, as Trustee in Bankruptcy :	
of LEASING CONSULTANTS INCORPORATED,	
Bankrupt,	:
	73 Civ. 1722 (A.B.)
Plaintiff,	:
	<u>STIPULATION</u>
-against-	:
FIRST NATIONAL CITY BANK,	:
Defendant.	:

-----x

IT IS HEREBY STIPULATED AND AGREED TO by and between  
 the attorneys for the respective parties that the fifth  
 decretal paragraph of the Order and Judgment previously made  
 by this Court, dated June 4, 1974, and said Judgment en-  
 tered in this Court on June 11, 1974 be and the same hereby  
 is corrected and amended, nunc pro tunc, subject to the ap-  
 proval of the Court, to read as follows:

"5. Plaintiff have judgment against defendant upon  
 his third cause of action in the principal sum of  
 \$25,150.91 with interest thereon through May 9,  
 1974 in the amount of \$6,201.10, plus interest on

*Stipulation and Order Amending and Correcting Nunc Pro  
Tunc Fifth Decretal Paragraph of Aforesaid Order and  
Judgment Dated June 4, 1974*

the principal sum at the rate of \$4.13 per day from  
May 10, 1974 until the day judgment is entered".

Dated: New York, New York  
June 26, 1974

HAHN, HESSEN, MARGOLIS & RYAN  
Attorneys for Plaintiff

By *Alvin Weisbach*  
A Member of the Firm

ZALKIN, RODIN & GOODMAN  
Attorneys for Defendant

By *66 Louis S. Zalkin*  
A Member of the Firm

SO ORDERED

Dated: June 28 1974.

*5/ Arthur Brauman*  
United States District Judge

Due and timely service of *Two* copies  
of the within APPENDIX is hereby  
admitted this *5th* day of *SEPTEMBER* 197*4*

*Donald J. Zinner*  
.....  
Attorney for APPELLEE

